Response to Comments Received on the Request for Comment on Renewal Information Collection for Toxic Chemical Release Reporting for the Form R (EPA ICR No. 1363.12, OMB No. 2070-0093, 67 FR 44213) and the Form A Certification Statement (EPA ICR No. 1704.06, OMB No. 2070-0143, 67 FR 44197)

Table of Contents

Introduction

EPA received comments from eighteen facilities in response to the FR Notice for the Information Collection Request renewal for the Form R (67 FR 44213), and comments from 6 facilities in response to the notice for the Information Collection Request for the Form A Certification Statement (67 FR 44197). Because there was a great deal of overlap in the comments submitted (i.e. comments submitted for Form R included comments related to the Form A Certification Statement and vice versa), EPA's responses to each issue raised relating to both Toxics Release Inventory (TRI) reporting forms will be combined here in a single "Response to Comments" document.

Some of the comments submitted for these ICR renewals that relate to TRI Persistent Bioaccumulative and Toxic (PBT) chemicals reporting (specifically, lead and lead compounds) were similar or identical to comments responded to in the Response to Comments document for the Final Rule for Lead and Lead Compounds (66 FR 4500). Excerpts of the lead rule comments and responses can be found in Attachment A, Excerpts From Final Lead Rule Response to Comments Document.

1. COMMENTS RELATED TO FORM R BURDEN

Rule Familiarization Occurs Every Year

Commenter: IPC, NPCA

Comment: The commenters disagree with EPA's statement in the proposed ICR renewal that "since there are no final rules pending at this time, this ICR renewal does not require annualized burden estimates that account for first-year reporting burden." The commenters state that even if there are no new rules within a given approval period, there will still be first-year reporters from the ranks of newly formed companies, as well as companies that exceed the reporting threshold for the first time.

Response: EPA agrees with the commenters that some facilities report to TRI for the first time every year even if there are no major programmatic changes. Since 1994, there have been three reporting years without major programmatic changes. Based on reporting for 1996, 1997, and 1999, the average rate of facilities that file using new TRI Facility IDs is 4.7%. These facilities filed an average of 2% of the Form Rs and 4.5% of the Form As. For the purposes of this ICR, these percentages can be used to represent "first-time filers" and reporting by first-time filers. EPA has modified the Form R and Form A burden estimates to account for this baseline level of first-year reporting burden in years without major programmatic changes by assigning burden for rule familiarization to the first-time filers and additional burden for calculations and form completion to reports filed by first-time filers. These changes are reflected in the Supporting Statements for the Form R and Form A Certification Statement ICRs.

Underestimation of Burden

Commenter: American Chemistry Council (ACC), American Petroleum Institute (API), Metals Industry Recycling Coalition(MIRC), National Association of Manufacturers (NAM), Society of Glass and Ceramic Decorators (SGCD)

Comment: The commenters assert that EPA's estimated total annual burden hours and costs for Form R reporting, and the assumptions on which those estimates are based, are inaccurate. NAM asserts that increased familiarity with the program, improved guidance and computerization have only had a minimal impact on reporting burden. NAM asserts that changes to guidance documents, interpretations, and TRI thresholds contribute to a growing complexity of TRI reporting and the need to analyze EPA guidance and reporting packages annually. API asserts that EPA has underestimated the burden of TRI reporting. API states that average burden for the 99 facilities in API's burden survey is 2 to 5 times higher than EPA estimates for 180 facilities. API's conclusion is based on an estimate of 150 hours per facility for an API facility filing 12 Form Rs versus the "average" facility presented by EPA that files 3 Form Rs in 62.5 hours. API also references an average of 27 hours per facility derived by dividing the total hours by the total number of responding facilities. API states that a revised ICR should specifically address the burden on large, complex facilities, which is not discussed in the current ICR. SGCD states that the lowered time estimate of 47.5 hours to track lead usage throughout the year and complete a Form R for lead is low for glass/ceramic decorators.

Response: EPA believes that its estimates of total annual burden hours and costs for Form R reporting are accurate. Although NAM alludes to a growing complexity of TRI reporting and changes to thresholds, these factors do not appear to have increased unit reporting burden. Rather, unit reporting burden has declined as reflected in the responses from reporting facilities.

EPA does not agree with API's assertion that EPA has underestimated the burden of TRI reporting. In fact, EPA believes that API's results support EPA's conclusion that the unit burden of Form R reporting is much lower than prior EPA estimates. Although API states that the average burden of 99 surveyed facilities is 2 to 5 times higher than EPA's revised estimates, this conclusion relies on a misapplication of EPA's method for burden estimation. API estimates a total burden of 150 hours per facility for the average API facility filing 12 Form Rs. While API compares this result to an EPA estimate based on a facility filing 3 Form Rs, EPA would actually estimate 238 hours for a facility filing 12 Form Rs based on its revised burden estimates. This is almost 60 percent higher than API's estimate. API also divides their surveyed facilities into large facilities (with an average of 26 Form Rs per facility) and small facilities (with an average of 8 Form Rs per facility). For a facility with 26 Form Rs, EPA's method would estimate a reporting burden of 511 hours, while API estimates 570 hours. In part this difference can be explained by the fact that in reporting year 2001 some of the reports were first-time reports for lead and lead compounds with higher compliance determination and form completion burdens. EPA's estimate is based on the subsequent year reporting expected during the period of the ICR. For a facility with 8 Form Rs, EPA's method would estimate a reporting burden of

160 hours, while API estimates 56 hours. Although API estimates more time for rule/guidance familiarization and compliance determination than EPA, this is more than compensated for by EPA's higher estimate for form completion and mailing.

API also references an average of 27 hours per facility derived by dividing the total hours by the total number of responding facilities estimated by EPA. This calculation ignores the variation in numbers of forms filed by different facilities. While most facilities file three or fewer Form R, some facilities file more. EPA's total burden hour estimates for Form R reporting reflect this variation and are derived by multiplying report-specific burden by number of reports and facility-specific burden by number of facilities. Although the ICR presents burden for "typical" facilities that file a few Form Rs for illustrative purposes, it also fully reflects the burden faced by facilities that file more Form Rs.

With regard to SGCD's comment, it appears that the commenter is referencing an estimate for Form R completion from the rule to lower reporting thresholds for lead and lead compounds. For first-time lead and lead compound reporters, as many SGCD members are, EPA actually estimated 69 hours for calculations and form completion in the first reporting year. This estimate has not changed. However, EPA expects that reporting burden will fall in subsequent years as reporters become more familiar with the reporting process and identify sources of data at their facilities. This has been the experience of other reporting facilities, and SGCD does not present data to support the contention that EPA's revised burden estimates for subsequent year reporting do not reflect average burdens experienced by reporting facilities.

Comment: NMA and API assert that EPA has underestimated the time required for compliance determination, and should increase the associated burden estimate. API asserts that EPA has oversimplified the activities required for the data collection and analysis behind threshold determinations. API asserts that activities are even more time intensive after the expansion of the program to include new reporting rules for PBT chemicals, which eliminated the *de minimis* exemption for PBT chemicals. In API's survey, the average time for compliance determination was 38 hours per facility, with larger facilities spending hundreds of hours making compliance determinations.

Response: EPA has not underestimated the time required for compliance determination. Compliance determination is an activity that all facilities that are subject to EPCRA section 313 must undertake, even if they do not exceed reporting thresholds. The vast majority of facilities that could potentially report to TRI do not exceed reporting thresholds. EPA's estimate of 4 hours for compliance determination in subsequent years accounts for the approximately 175,000 facilities that must re-assess their manufacture, processing, and otherwise use of chemicals on an annual basis. Only facilities that are very close to the reporting threshold quantities would be expected to spend more than the average amount of time for compliance determination. Since API's estimates of both Form R completion and total compliance time per facility are lower than EPA's revised estimates, it is possible that some of the time that API attributes to the activity of compliance determination for reporting facilities may in fact be time that facilities spend completing the Form R.

This issue must also be considered in light of first year reporting versus subsequent reporting years, as well as with regard to estimates of total reporting burden for facilities. API surveyed 99 facilities for the 2001 reporting year. During this period, many facilities experienced additional burden relating to rule familiarization, compliance determination, and form completion related to a lower reporting threshold for lead and lead compounds. This burden associated with first year reporting was reflected in the previous ICR. As a result, it is unclear whether the responses reflect the lower burden that will be expended in subsequent reporting years.

Based on EPA's previous experience interviewing facilities about compliance burden, it is also possible that the facilities interviewed by API may be including time to collect information that is required by other reporting or monitoring requirements. It has been EPA's experience that facilities will sometimes include burden that is incurred in complying with other regulations if data from those compliance activities are ultimately used for TRI reporting. Although it is appropriate to attribute time spent arranging data and making calculations for TRI forms, it is not appropriate to attribute time spent complying with other regulations to TRI compliance. This can lead to double-counting of burden. Nevertheless, results from the API survey actually reflect lower total reporting burden for most facilities than EPA's revised method would predict. As a result, EPA does not believe that it would be appropriate to add additional hours to the total burden estimate for compliance determination.

Comment: ACC asserts that certain recurring categories of burden (training, rule familiarization, QA/QC) are not included in the ICR. ACC estimates that these additional burden categories would increase the per-facility annual burden by at least 6 hours, and the per form annual burden by at least 10 minutes. ACC also asserts that the average burden per Form R ranges from 10 to 21 hours based on EPA's data. ACC states that EPA should use the upper end of the range.

Response: What is important for the purpose of the ICR is whether the method produces total burden estimates that conform with respondent experience. EPA's burden method produces total burden estimates that correspond well with the actual experiences of respondents as reflected in EPA's background documents and API's burden survey. ACC did not provide data to support adding additional burden categories to those already in existence. Furthermore, adding 6 hours and 10 minutes to EPA's estimate would take the estimate out of the range of 10 to 21 hours cited by ACC. EPA is using an estimate of 19.5 hours for Form R calculations, form completion, record keeping and mailing. This is toward the upper end of the range. Data from API's burden survey produce an average of 8 hours per form for these same activities. If anything, this would argue for using a value toward the lower end of the range, rather than the higher end as ACC suggests.

Comment: API asserts that EPA's assumption regarding the typical number of forms filed per facility is not representative of the industries represented by API. API asserts that EPA assumed that all facilities that file any Form Rs file only three of them. API points out that it is not uncommon for larger facilities to file 25 to 45 Form Rs per facility. API asserts that EPA failed to consider these larger facilities.

Response: EPA recognizes that the number of Form Rs filed per facility varies by industry and facility size. However, for the TRI program as a whole, 3 Form Rs per facility is a reasonable representation of a typical facility. As EPA noted in the supporting statement for the Form R ICR, approximately 70 percent of affected facilities file 3 or fewer Form Rs. The most common number of Form Rs filed per facility is 1. For reporting year 2000, 36 percent of facilities filed 1 Form R, 21 percent filed 2 Form Rs, and 13 percent filed 3 Form Rs.

For the purpose of estimating total Form R burden, EPA did not assume that all facilities file 3 Form Rs. EPA's total burden and cost estimates are based on report-specific and facility-specific burdens. These are multiplied by the total number of reports and affected facilities. Thus, all reports and facilities are considered. However, for the purpose of helping the public understand the experience of a typical facility, EPA presented the burden on a facility filing 3 Form Rs.

Employee Turnover = Burden

Commenter: American Chemistry Council (ACC), American Petroleum Institute (API), Association Connecting Electronics Industries (IPC), National Association of Manufacturers (NAM), National Paint and Coatings Association, Inc.(NPCA)

Comment: The commenters assert that staff turnover at reporting facilities add to burden and cost because new employees or contractors need training. NAM states that TRI data is often compiled by new or contract employees positions that experience a great deal of turnover. ACC, API, and IPC point to annual TRI training offered by EPA to prove the need for on-going rule familiarization. ACC posits that if adequate training consists solely of 1 EPA-sponsored 2 day training session (16 hours), and assuming that facility turnover requires staff training every four years, the burden associated with training would be 4 hours per year per facility. ACC suggests that at least an additional 2 hours per facility should be added to the burden estimate to account for ongoing rule familiarization. API asserts that rule familiarization takes an average of 16 hours each year (per facility) with some larger facilities spending 100 hours or more each year on this activity. IPC states that responsible TRI filers attend eight to sixteen hours per year of TRI training, if available, in order to ensure compliance with continually changing guidance and interpretation. API asserts that EPA is continually issuing new interpretations and guidance that require new training, even for existing employees.

Response: EPA recognizes that staff turnover occurs at reporting facilities. However, EPA also notes that the assignment of TRI reporting duties is at the discretion of the facility. Some facilities may find it more cost effective to assign TRI reporting to newer, less experienced staff with lower wages, even if these staff require additional time to become familiar with TRI reporting requirements. If EPA were to assume that a subset of facilities adopted this strategy, it would also be necessary to adjust the wage rates to account for the status of the newer employees. Furthermore, although EPA provides free training opportunities, this training is not required for completion of Form R. The majority of facilities

do not send staff to these sessions, and it would not be appropriate to assume that every facility expends time in attending these training sessions.

With regard to comments requesting additional burden categories or additional unit burden hours, EPA notes that its estimates of total burden are already higher than API's estimates of total burden. As a result, it would not be appropriate to add additional burden categories or additional hours per facility to EPA's estimates. EPA's estimates are based on the reporting experiences of TRI facilities, which includes any training and compliance determination undertaken by facilities. Adopting the commenters' approach would result in estimates that are inflated beyond the actual total reporting burden of affected facilities. EPA does not believe this would provide an appropriate characterization of reporting burden.

Computerization = Burden

Commenter: National Association of Manufacturers (NAM)

Comment: NAM comments that the increasing complexity of TRI reporting requires constant updating of data systems within reporting entities and packages. NAM states that TRI data compilation depends heavily on diverse and changing business systems to determine manufacturing, processes or use thresholds. For example, one NAM member's facility was required to get usage data from four different systems for both the indirect and direct products. NAM also cites the time spent keeping data files up-to-date during the year and the time spent updating the program every time a TRI rule interpretation changes. In addition, NAM states that glitches in EPA's TRI reporting packages have caused additional burden on the reporting facilities.

Response: Although EPA believes that, on balance, computerization and automation have been a factor in reducing reporting burden, it is possible that some facilities have experienced difficulties in systems integration. However, EPA believes that any situations of this nature would be reflected in EPA's revised burden estimates since they are derived from the total reporting burden from a broad cross-section of reporting facilities.

Unavailability of Computers Contradicts CROMERRR

Commenter: Association Connecting Electronics Industries (IPC)

Comment: IPC asserts that EPA's comments about computerization and recordkeeping directly contradict EPA's proposed Cross-Media Electronic Reporting and Record-keeping Rule (CROMERRR), which IPC characterizes as being based on the assumption that computers are not yet prevalently used for environmental recordkeeping and compliance. However, IPC's comment does not

specifically reference any EPA statement from CROMERRR about the prevalence of computers in use for environmental recordkeeping and compliance.

Response: EPA's comments about computerization and record keeping with respect to TRI reporting were intended as one possible theory of why observed reporting burden is lower than EPA's previous estimates. The supporting statement for the ICR makes no claims about the prevalence or nature of computerization or automation at TRI reporting facilities, although it is true that 79 percent of TRI reports were received in electronic format for the 2000 reporting year. In many cases, "computerization" may be as simple as a spreadsheet that is updated from year to year. In other cases, facilities may take advantage of the burden reducing possibilities of TRI-ME.

Availability of Info = Burden

Commenter: Association Connecting Electronics Industries (IPC)

Comment: IPC asserts that the increased availability of information increases rather than decreases the reporting burden as staff must review the additional information and perform additional calculations. IPC further states that most industry sectors have not been provided emissions factors of any type for lead reporting.

Response: Availability and amount are distinct characteristics of information. EPA's statements about availability of information were intended as one possible explanation of why observed reporting burden is so much lower than EPA's previous estimates. EPA was merely commenting on the advent of e-mail and the Internet, both of which make data acquisition and sharing much less time consuming. Compared with a decade ago, it is easier for EPA and industry associations to disseminate and facilities to obtain information such as emission factors when they are available.

Comment: IPC asserts that the length of guidance documents contributes to the burden of completing TRI forms.

Response: EPA acknowledges that facilities must review reporting instructions and, on occasion, are assisted by industry-specific guidance documents. EPA does not agree that the comprehensiveness of EPA's guidance documents in itself contributes to the burden of completing TRI forms. EPA's guidance documents respond to issues raised by reporting facilities and trade associations, including IPC. If anything, the length of guidance documents makes it more likely that a facility can find guidance that is appropriate to the specific circumstances of that facility. EPA's guidance documents are reference materials that are compiled based largely on questions asked by affected facilities. EPA believes that industry- and chemical-specific guidance makes reporting easier and less error-prone by providing detailed information that relates to the specific circumstances of reporting facilities.

EPA has tried to make TRI guidance documents and TRI reporting as a whole more user-friendly with the development of TRI-ME, new search features and indices to help people to find information more quickly, and making guidance documents available electronically. EPA is always interested in suggestions for improving usability of EPA's extensive TRI guidance.

Quality Assurance/Quality Control

Commenter: American Chemistry Council (ACC)

Comment: The commenter asserts that survey respondents did not consider the time associated with review of the facility data profile to ensure that data entered by EPA matches that submitted. ACC asserts that this activity adds at least 10 minutes to EPA's estimate. ACC asserts that if the data include a notice of significant error, the time needed to check and correct the flagged data, including management time to review and acknowledge the revisions could take much longer.

Response: EPA believes that survey respondents considered the time associated with review of the facility data profile. Facilities were asked about total compliance time, which would include all activities related to complying with the requirements associated with Form R. Even without this category of burden broken out separately, EPA's total burden estimates for reporting facilities are still higher than those produced by API's burden survey.

Burden of TRI Has Increased Over Time

Commenter: American Chemistry Council (ACC), American Petroleum Institute (API), Consumer Specialty Products Association (CSPA), Association Connecting Electronics Industries (IPC), National Association of Manufacturers (NAM), National Mining Association (NMA), National Paint and Coatings Association, Inc.(NPCA)

Comment: The commenters disagree with the decline in total estimated burden and cost of Form R reporting as reflected in the ICR supporting statement. The commenters state that the burden and cost to industry of the TRI program has increased since its inception in 1988. These commenters cite final rules to add TRI reporting on new chemicals, to cover additional industry groups, and to lower reporting thresholds for persistent bioaccumulative toxic chemicals. In addition, ACC cites the production of new and revised guidance documents and changes in EPA interpretations of existing regulations. Based on comments submitted for a previous ICR renewal, ACC asserts that the costs of the TRI program have increased an average of 14 percent annually compared to 3 percent annually for all other EPA programs.

Response: Expansion of the applicability of the reporting requirements has not led to major increases in total reporting burden and cost. While the applicability of Form R reporting to chemicals and

industries has changed over the years, the number of affected facilities and Form Rs filed has been relatively constant. In addition, based on feedback from actual respondent facilities, Form R reporting is less burdensome than historically estimated by EPA.

One issue is whether the expansion of the applicability of reporting under EPCRA section 313 has greatly affected actual levels of Form R reporting. As shown in the table below, it has not:

Reporting Year	Reporting Facilities	Form Rs Submitted
1988	23,931	88,520
2000	23,484	78,304

The number of affected facilities filing forms and Form Rs have both declined though 2000. Despite several important actions to increase the applicability of reporting under EPCRA section 313, reporting levels have stayed relatively constant through the 2000 reporting year. For the period of the ICR, EPA has predicted that 24,308 facilities would file 88,117 Form Rs. The increase in facilities and forms over the 2000 reporting year levels is a result of a lower reporting threshold for lead and lead compounds that becomes effective with the 2001 reporting year.

Another issue is whether the unit reporting burden and cost of submitting an individual report has changed. With subsequent years of reporting, the total time to fulfill reporting obligations declines. This is supported both by EPA's review of reporting burden at 180 affected facilities, as well as by a survey of 99 refineries and bulk terminals conducted by API. The average number of Form Rs filed by facilities in API's survey was 12. Based on this number of Form Rs, EPA estimates a total per facility compliance time of 238 hours. API estimated 150 hours for a facility with 12 Form Rs. Prior to this ICR renewal, EPA would have estimated a total compliance time of approximately 629 hours for this facility. Thus, based on respondent experience, the unit reporting burden has fallen, as reflected in revised estimated of total compliance time. These results contradict ACC's assertion that changes in EPA interpretations and guidance documents have increased compliance time. This assertion is not supported by actual reporting experience. As for ACC's assertion that the costs of the TRI program have increased by 14 percent annually, this estimate is not supported by feedback from individual reporters, and EPA is unable to replicate this assertion.

Comment: ACC comments that if the estimates in the draft Form R ICR were to be adopted, there would be a large drop in reporting burden starting in 2003. ACC asserts that the resulting time series would be misleading, and would undermine the integrity of the Paperwork Reduction Act and the federal data quality guidelines. NMA notes the decrease in estimates of total responses and total burden hours from March 2002 to July 2002. NMA states that EPA's estimate for reports declined by 40 percent, while the estimate of burden hours dropped by 75 percent. NMA states that the credibility

of EPA burden estimates is open to serious question because of the magnitude of the change from previously approved levels.

Response: EPA does not believe that the magnitude of the change from previously approved levels affects the credibility of the estimates, nor would it undermine the integrity of the Paperwork Reduction Act or the federal information quality guidelines. Since ICRs are typically reviewed on a three year cycle, there is always a possibility of changes to burden estimates as new information becomes available. The fact that previous burden estimates have turned out to be significant overestimates does not argue for continuing to use estimates which are known to be misleading. EPA does not believe that the public interest would be served by continuing to use inflated burden and cost estimates that do not reflect the reality of the reporting experience. EPA's adjustments to the burden and cost estimates are supported by feedback from individual reporting facilities and are well documented.

EPA does not believe that the resulting time series would be misleading. EPA has explained that the burden estimates for the period of the ICR reflect new estimates based on four major adjustments. The first adjustment is to the number of responses. The burden estimates reflect actual numbers of affected facilities and reports submitted to EPA rather than estimates of future reporting that are subject to significant uncertainties. The second adjustment is to the unit burden hours. EPA has revised the estimate of unit burden hours for Form R completion in subsequent reporting years from 47.1 hours to 14.5 hours based on the actual reporting experience of affected facilities. These results replace engineering estimates that date to the inception of the program in 1987. The third adjustment relates to annualization of reporting burden. In previous ICRs, the renewal period has coincided with programmatic changes in one or more years. Previous ICRs have been based on annualized estimates of burden (including time for rule familiarization and higher first year reporting burdens). Since there are no final rules pending at this time, this ICR renewal does not require annualized burden estimates to account for large upfront burdens. The fourth adjustment relates to the adoption of TRI-ME, an automated reporting software package that simplifies the reporting process by automating calculations and compiling instructions and guidance in an electronic format. While incorporating these adjustments causes a decrease in estimated reporting burden, EPA believes that making these changes to the burden estimate improves the public's understanding of the actual burden of Form R reporting.

Inclusion of Lead/PBT Rules in ICR Burden Estimates

Commenter: National Association of Manufacturers (NAM)

Comment: NAM asserts that EPA did not include the burden of the new lead reporting rule in the ICR.

Response: EPA included the burden of the new lead reporting rule in the ICR. Section 6(d) of the ICR Supporting Statement explained that the number of predicted reports and new affected facilities from the final rule to lower reporting thresholds for lead and lead compounds was included in the

burden and cost estimates. During each of the three years of the ICR, EPA estimates that 24,308 facilities will submit 88,117 Form Rs. This estimate was obtained by adding predicted reporting for the lead rule to reporting levels for 2000. For the rule lowering reporting thresholds for lead and lead compounds, EPA predicted that there would be 3,639 new facilities and 6,174 current facilities submitting a total of 9,813 additional reports for reporting year 2001. For the 2000 reporting year, 20,669 facilities submitted 78,304 Form Rs. Thus, the number of facilities is 24,308 (20,669 current reporting facilities + 3,639 new reporting facilities), and the number of Form Rs is 88,117 (78,304 current Form Rs + 9,813 new Form Rs for lead). As with previous estimates that incorporate projections of reporting that has not yet occurred, it is likely that these figures are overestimates of reporting that will actually occur.

Commenter: Association Connecting Electronics Industries (IPC)

Comment: The commenter asserts EPA has incorrectly assumed that the current reporting pattern with respect to reporting to various environmental media will be replicated in future reporting year. IPC asserts that the promulgation of lowered reporting thresholds for PBT chemicals represents a changing reporting climate which will change the pattern of single media reporting.

Response: Any change in the environmental media reporting pattern from PBT chemical reporting should be reflected in the 2000 TRI data, since this reporting year includes PBT chemical reporting at the lower thresholds. EPA used 2000 TRI data to characterize the pattern of single media reporting. Prior to EPA's burden hour revision, the burden hour estimates incorporated the assumption that every facility reports releases of each reported chemical to all environmental media: air, water, and land. This assumption leads to an overestimate of reporting burden because it implies that facilities will spend time gathering information, making calculations, and keeping records for a broader set of chemical management activities than is actually the case. In fact, for the 2000 reporting year, over 60 percent of Form Rs reported releases to a single medium. Another 12 percent reported no releases, but instead reported only on off-site transfers and on-site waste management. Only 1 percent of Form Rs included release data for all media.

Burden Survey is Flawed

Commenter: ACC, API, CSPA, IPC, NPCA

Comment: The commenters assert that the data used to revise EPA's estimates of burden hours required to comply with Form R reporting are unsatisfactory. ACC, API, and CSPA question whether burden data from 180 facilities can be used to represent all Form R filers. ACC asserts that a more representative sample would focus on facilities in sectors that submit large numbers of Form R reports. ACC also asserts that the survey question was too general to elicit an accurate estimate of respondent burden. ACC, API, CSPA, IPC, and NPCA assert that the data were collected several years ago and

may no longer be accurate since it was collected prior to certain programmatic changes such as industry expansion and lowering of reporting thresholds for certain PBT chemicals.

Response: EPA believes that the available burden data are appropriate for the purpose of revising unit reporting burden estimates, especially in light of the more recent burden data gathered by API. The sampled facilities used by EPA reflect a broad range of SIC codes that represent about 65% of industries reporting to TRI, and the data consistently show that historical estimates of reporting burden used by EPA are inflated. Although other methods might have been selected, EPA chose to use data that had already been collected through a statistically valid process rather than burdening industry with an additional data collection. While ACC asserts that a more representative sample would focus on facilities in sectors that submit large numbers of Form R reports, ACC provides no further details or justifications as to why this would be a superior sampling strategy, or why such an approach would yield divergent results. EPA does not agree with the assertion that the survey question was too general. The survey approach varied slightly from data source to data source, but in all cases facilities were encouraged to think globally about the compliance burden of Form R reporting. Rather than forcing respondents to divide time into arbitrary burden categories, the elicited responses reflect total compliance burden. EPA also disagrees that data collected in the mid- to late-1990s are dated. In fact, the results are corroborated by a survey of burden conducted by API for reporting year 2001. Although API's results are confounded somewhat by the first year of reporting on lead and lead compounds at lower thresholds, the API survey shows that EPA estimates of total reporting burden are near or above API estimates when similar numbers of reports are assumed.

De Minimis/Ranges/Precision

Commenter: IPC, NMA and NPCA

Comment: The commenters assert that changes in reporting for PBT chemicals increase reporting burden. The commenters assert that EPA has not adequately accounted for the increased burden of eliminating the *de minimis* exemption, range reporting, and requiring facilities to report to a precision of 0.1 lbs for PBT compounds. IPC and NPCA cite an "information gap" relating to the unavailability of information on PBT chemicals that creates a significant burden for businesses attempting to complete TRI reporting forms.

Response: EPA does not agree that changes in reporting requirements for PBT chemicals increased reporting burden for each Form R. Data from API's burden survey covering reporting year 2001 indicate that EPA may, in fact, have overestimated the number of hours required to complete and submit the Form R. API found that large facilities require 16 hours per Form R and small facilities require 8 hours per Form R. EPA estimated 19.5 hours per Form R. Even considering larger estimates for time devoted to rule/guidance familiarization and compliance determination, EPA's method results in larger total burden estimates per facility than the API survey of more recent reporting experience.

On the issue of *de minimis*, EPA disagrees that the elimination of the *de minimis* exemption for PBT chemicals increases the extent of this required effort beyond what EPA has already estimated. EPCRA section 313(g)(2) requires that facilities use monitoring data collected pursuant to other statutes or, if that is not available, they are required to make reasonable estimates. This section states that "In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation." EPA has interpreted this to cover threshold determinations as well as release estimates. EPCRA does not require that facilities conduct monitoring to comply with the statute.

EPA does not expect that the elimination of range reporting and changes to the existing rules for rounding and whole numbers for PBT chemicals significantly affect the unit cost of reporting. As discussed in the Response to Comments document for the TRI PBT Rule, EPA believes its unit cost estimates for reporting are reflective of point estimate reporting since many reporters did not use range reporting when it was available. Even reporters who used range reporting in section 5 and 6 of the Form R for PBT chemicals were already required to report whole numbers rather than ranges in section 8. Furthermore, range reporting and rounding is related to how information is *presented* on the reporting form rather than how it is *calculated*. For example, a facility would calculate its estimate of chemical releases or other waste management activities based on readily available information or through reasonable estimates as required by EPCRA section 313 (g)(2). Under current reporting rules, the facility then has the option of presenting the result (if less than 1,000 pounds) as a point estimate or as a range in sections 5 and 6 of the Form R. There is no range reporting option for the presentation of data in section 8. As an issue of presentation, the elimination of range reporting is not expected to have any significant effect on unit reporting costs.

EPA Ignored Other Follow-On Burden

Commenter: Non-Ferrous Founders' Society (NFFS)

Comment: The commenter asserts that EPA failed to take into account the "piggyback effect" that reducing the reporting threshold for lead would have on facilities like small businesses. NFFS asserts that many general NPDES permits for stormwater runoff require monitoring only if the facility is required to file a Form R.

Response: EPA has addressed this and similar comments on numerous occasions as part of TRI rulemakings. The most extensive discussion of this issue can be found in EPA's Response to Comments for the chemical expansion rule (59 FR 61432, November 30, 1994. See sections 7.1 and 7.5 of the

"Response to Comments Received on the January 12, 1994 Proposed Rule to Expand the EPCRA Section 313 List." U.S. Environmental Protection Agency, Washington, DC, 1994, contained in docket number OPPTS-400082B.) Associated requirements were also addressed more recently in Appendix L of the Economic Analysis of the Final Rule to Modify Reporting of Persistent Bioaccumulative Toxic Chemicals Under EPCRA section 313 (October 1999) and in EPA's Response to Comments for the TRI lead rule (66 FR 4500, January 17, 2001. See sections 8.b.ii. of the "Response to Comments Received on the August 3, 1999 Proposed Rule (64 FR 42222) to Lower the EPCRA Section 313 Reporting Thresholds for Lead and Lead Compounds." Office of Information Analysis and Access, U.S. Environmental Protection Agency, Washington, DC (2000), contained in docket number OPPTS-400140.).

EPA believes that for analytical purposes it is appropriate to limit its assessment of costs and benefits of rules to those directly resulting from the specific rule consistent with EPA guidance for economic analysis. Although regulatory requirements under other statutes may be triggered by EPCRA section 313 reporting, they are not required by this or any other rule issued by EPA under EPCRA section 313. EPA has investigated these associated regulatory requirements, but has included neither the costs nor the benefits of associated requirements with the costs and benefits of the rule. Therefore, EPA does not accept the commenter's contention that EPA should have considered the additional burden associated with these requirements. The burden associated with general NPDES permits for stormwater runoff and other federal programs are addressed in the ICRs for those programs.

Use Old Burden Estimates

Commenter: American Chemistry Council (ACC)

Comment: ACC asserts that it is possible that EPA's estimates understate actual burden by almost 1 million hours. ACC recommends that EPA should continue to use its prior estimate of the burden associated with TRI reporting, at least until such time as a new burden study is conducted to verify the accuracy of the new estimates. Alternatively, ACC argues that EPA should use a figure of 21 hours to better reflect the uncertainty inherent in the existing survey data.

Response: EPA does not agree with ACC's calculations and conclusions. ACC has provided no verifiable data to support the conclusion that facilities devote more time to the Form R than EPA estimated. EPA notes that API's burden survey indicates that EPA's estimates of burden are not too low. As a result, it would not be appropriate to add additional burden categories or additional hours per facility to EPA's revised estimates.

Do a New Burden Survey

Commenter: ACC and API

Comment: The commenters urge EPA to conduct another burden study relating to the TRI forms for the sole purpose of obtaining an accurate and precise estimate of burden based on a representative sample of reporting facilities. API asserts that data from its own survey of 99 facilities indicates that EPA's revised burden estimates are too low. ACC asks that EPA retain its existing estimate of the reporting burden until a new survey can be completed that will show that reporting burden has not dropped. In the absence of a new reporting survey, ACC recommends that at least 6 hours per facility be added to address missing burden categories.

Response: EPA believes that sufficient information is already available to support lowering the burden estimates for Form R reporting. EPA's revised burden estimates are lower than prior estimates, but still comparable or even higher than estimates of total facility burden from the API burden survey. EPA cannot identify a compelling reason to continue to use overestimates of burden that misinform the public and the regulated community about the burden of TRI reporting. Nor does EPA believe that it would be appropriate to address uncertainties by arbitrarily adding burden categories and burden hours that are not supported by available data. Of course, EPA remains open to opportunities to collect additional data on reporting burden. However, EPA is hesitant to conduct studies of such detail and precision that the burden of the study on affected facilities rivals the burden of the collection instrument in place. Furthermore, additional burden studies are subject to resource constraints, and EPA is under no statutory obligation to conduct additional burden studies. EPA notes that the revised burden estimates in the ICR renewal represent an improvement over the previous estimates from the 1980s in that the revised estimates are based on data from respondent facilities while the earlier estimates were not. While additional burden studies may improve the accuracy of EPA's estimate of how much lower the unit burden of TRI reporting actually is, the cost of the additional research must be balanced with potential benefit of extending the accuracy of the revised estimates by additional decimal places.

EPA Has Not Reduced Overall TRI Burden

Commenter: NPCA, NFFS, and IPC

Comment: The commenters assert that, despite OMB's encouragement in the last ICR clearance, EPA has failed to take any actions that would significantly reduce reporting burdens. IPC asserts that EPA will not be able to obtain the approval OMB for the ICR because it fails to meet the standard in 44 U.S.C. § 3508. IPC claims that EPA must submit the request in a format that will meet that statutory standard while at the same time reducing reporting and recordkeeping burdens on small businesses.

Response: EPA has undertaken burden reduction through chemical delistings (there have been 28 chemical deletions and modifications since the inception of the TRI program), industry-specific guidance documents, enhanced electronic reporting, and the promulgation of an alternate reporting threshold.

However, EPA continues to be very alert to opportunities to reduce reporting burden without damaging the informational content of the TRI program. For example, EPA is also developing additional reporting guidance which will simplify and ease reporting burdens and is improving the TRI-ME reporting software to include built-in calculation methodologies and error checking routines. EPA is also developing a single facility identification program for facilities that report to EPA and developing guidance to facilitate more consistent use of chemical nomenclature, reporting units, and time frames across different programs.

IPC does not explain why IPC believes that the ICR fails to meet the standard in 44 U.S.C. § 3508. This section deals with "practical utility." EPA has addressed issues of practical utility in the supporting statement for the ICR. EPA strongly believes that the data collected on Form R has practical utility as demonstrated by the timely provision of useful, reliable information which is used by a wide variety of parties, both inside and outside of EPA.

Commenter: CSPA and NPCA

Comment: The commenters assert that EPA has not reduced, to the extent practicable and appropriate at this time, the burden on persons providing the information being collected under EPCRA section 313. NPCA asserts that the program fails to provide benefits corresponding with the burden.

Response: EPA believes that it has reduced the burden on persons providing the information to EPA to the extent practicable and appropriate. For every major rulemaking it has undertaken with respect to EPCRA section 313, EPA has evaluated the burden that would be imposed by different reporting options. While EPA could have taken steps to further reduce burden, these steps would also reduce the amount of information available, therefore such steps would so diminish EPA's ability to achieve the objectives of EPCRA that they would not be appropriate. 44 U.S.C. §3505 requires that burden reduction goals be set that "improve information resources management in ways that increase the productivity, efficiency and effectiveness of Federal programs, including service delivery to the public." Service delivery to the public would not be improved by reducing TRI reporting by limiting or reducing the availability of information on releases and other waste management of toxic chemicals. EPA believes that TRI-ME and other methods that reduce reporting burden without eliminating data are approaches that deserve further investigation and investment. Over the period of the ICR renewal, TRI-ME is anticipated to reduce the burden of Form R and Form A Certification Statement reporting by approximately 300,000 hours (the equivalent of $13 million). This reduction in burden and cost is much more substantial than that offered by limiting or reducing the availability of information on releases and other waste management of toxic chemicals and does not lead to additional loss of data.

TRI-ME Doesn't Reduce Burden

Commenter: ACC, API, and NAM

Comment: The commenters disagree with EPA's estimate of burden reduction attributable to TRI-ME. NAM cites a variety of difficulties in installing and running the TRI-ME software during its pilot period. API asserts that most (96 of 99) facilities in the API survey are not using TRI-ME, and two of the three facilities concluded that the TRI-ME software did not save them any time in reporting. ACC asserts that a more representative assumption is that TRI-ME reduces the time associated with calculations/form completion and record keeping/mailing by 10 percent rather than 25 percent because the TRI-ME software only automates preparation of the form once all the relevant data are available.

Response: EPA's estimate for burden reduction attributable to TRI-ME is based on a small sample of facilities that used TRI-ME for the 2000 reporting year as part of a pilot process. EPA expects to add additional burden reducing features to TRI-ME and to resolve any of the installation or implementation glitches experienced by the pilot users. Despite the trial nature of early TRI-ME use, these facilities reported an average burden reduction of 25 percent in the activities of Form R Calculations and Form Completion and Recordkeeping/Mailing, although burden savings varied from 5 to 78 percent. These results should include any difficulties experienced by reporting facilities since facilities were asked what percentage savings in reporting burden, if any, they experienced as a result of using TRI-ME.

With respect to API results, it should be noted that TRI-ME is emerging from a pilot period. Not every facility was offered the opportunity to test TRI-ME. Most of the facilities in EPA's sample had 1 or 2 Form Rs, which is consistent with the majority of facilities that file Form Rs. One facility had 10 Form Rs, which is more similar to API members. This facility experienced a 10 percent burden savings. It is possible that facilities with larger numbers of reports may have already adopted other computerized or automated systems that provide comparable burden savings to TRI-ME. As a result, it may be more difficult to motivate these facilities to switch to TRI-ME. But the fact that they are reluctant to switch may indicate that these facilities have already obtained similar burden savings with alternate systems. Furthermore, EPA notes that API members are not representative of most TRI filers in that API members tend to file more TRI reports per facility (12 per facility in the API sample) than the general population of TRI filers. As a result, API's results would not be representative of most TRI filers, 70 percent of whom submit 3 or fewer Form Rs per year.

EPA does not agree with ACC that TRI-ME only automates preparation of the form once all the relevant data are available. TRI-ME also reduces search time for applicable reporting instructions and guidance, walks the user through threshold and release calculations, and provides error checking. Based on these features and feedback from TRI-ME users, EPA believes that an average burden reduction of 25 percent in the activities of Form R Calculations and Form Completion and Recordkeeping/Mailing for facilities that adopt TRI-ME is reasonable. ACC provides no data to support their alternate estimate, or to justify modifying EPA's burden reduction estimate.

Estimate Future Changes

Commenter: NMA

Comment: The commenter asserts that EPA must include estimated increases in both reports and burden hours from anticipated expansions of the TRI program. NMA expects that during the next three years the Agency will take several steps that, if finalized by rule, will expand facilities' reporting obligations. NMA asks that if EPA is unable to provide reasonable estimates now, then at the time any of these reporting exemptions are narrowed or eliminated, EPA should be required to re-submit the ICR renewal with appropriate estimates on the increase in numbers of reports and burden hours.

Response: EPA is unable to provide reasonable estimates now, as these rules have not been proposed. There may be substantial changes prior to proposal and after public comments. As a result, EPA believes it is inappropriate to request additional burden hours from OMB for changes that have not even been proposed. As with previous rules, EPA plans to submit revisions or amendments to the ICR that is in place to account for the burden of actions taken during the approval period.

Zero Releases

Commenter: API

Comment: The commenter suggests that EPA reduce the burden of the collection by eliminating the requirement to file Form Rs when the release to be reported is zero. API states that one of API's member companies has 50 bulk petroleum terminals that filed 498 Form Rs in the last reporting year, of which 119 were for zero releases. API states that filing these 119 reports required over 1000 hours. API requests that EPA determine the number of zero release reports, assess their practical utility, and consider eliminating the need to file them.

Response: Allowing facilities not to file reports on which releases are zero would not necessarily lead to substantial burden reductions. Facilities would still need to make threshold calculations and go though release calculations to obtain the "zero" result. By this point, most of the burden has been expended. Not filing the report would only ensure that there is no public benefit to the burden expenditure by removing the report from the public database.

Section 313(h) of EPCRA states that the TRI data are "to inform persons about releases and other waste management activities of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development if appropriate regulations, guidelines, and standards; and for other similar purposes." EPA believes that reports indicating that a facility exceeds a threshold but has no releases or other quantities of the chemical managed as waste provides the public with information on chemicals in their community. Just as knowing that facilities in a given community are releasing or otherwise managing chemicals as waste, EPA believes that the public should also know when facilities exceed an activity threshold for a given chemical but have no waste management activities associated with it. The fact that

a facility has developed a process with no associated releases or other waste management is valuable information for the local community in which the facility is located and also to other communities, as the facility with zero releases can serve as a model to other similar facilities.

Further, in addition to providing release and other waste management information, facilities report an indication of how the chemical is used and the maximum amount of the chemical on-site during the reporting year. This information may also be important to the community for emergency planning purposes particularly for facilities and chemicals that are not covered by EPA's Risk Management Planning requirements. In addition to information on releases and other waste management activities from facilities, the TRI reporting form also contains important information on quantities of waste otherwise managed on-site and transferred for off-site management, on-site management of waste streams, as well as qualitative information on source reduction activities. Focusing exclusively on releases and other waste management activities ignores the value of this other information.

EO 13272–Small Business

Commenter: NPCA

Comment: The commenter asserts that EPA and OMB must take immediate steps to insure that the impact of the TRI reporting program on small businesses are properly considered under Executive Order 13272 (August 13, 2002).

Response: As indicated by its title, Executive Order 13272 pertains to "Proper Consideration of Small Entities in Agency Rulemaking." This ICR action is not a rulemaking. Rather, it concerns OMB's periodic review and approval of forms under the Paperwork Reduction Act. Thus, the Executive Order does not apply to this ICR renewal.

Quantitative Benefits

Commenter: API

Comment: The commenter asserts that EPA's analysis of the practical utility of data collected is inadequate because EPA provides no quantitative estimates of the value of TRI data. As a result, API asserts that it is impossible to compare the costs of reporting to the value of the data (because there are no quantitative estimates).

Response: The term "practical utility" is defined in the Paperwork Reduction Act of 1995 (PRA). According to 44 USC § 3502(11), "the term 'practical utility' means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion." OMB's regulatory definition of "practical utility" at 5 CFR Part 1320.3(l) includes not only the

theoretical or potential usefulness of information to an Agency, but its actual usefulness, taking into account its accuracy, validity, adequacy, and reliability, and the Agency's ability to process the information in a useful and timely fashion, and taking into account whether the Agency demonstrates actual timely use of the data either by the Agency to carry out the Agency's own functions or by third parties. Neither of these definitions requires a monetized estimate of benefits. EPA strongly believes that the data covered by this ICR has practical utility as demonstrated by EPA's timely provision of useful, reliable information which is used by a wide variety of parties, both inside and outside of EPA. These issues are addressed in greater detail in the supporting statement for the ICR.

TRI Not Low Cost/High-value

Commenter: NAM

Comment: The commenter asserts that EPA has underestimated the compliance burden of TRI. As a result, NAM asserts that Congress and the public are given the incorrect impression that the TRI is a "low cost/high value" program.

Response: EPA does not believe that the compliance burden of TRI has been underestimated. EPA's revised burden hour estimates are based on careful consideration of data from 180 reporting facilities. EPA believes that this ICR more accurately reflects the burden imposed by Form R reporting.

Sources are not Significant

Commenter: CSPA

Comment: The commenter asserts that EPA admits that the average facility expends 70% of that burden for TRI sources that are not significant.

Response: EPA believes that the commenter may be mistaking the percentage of facilities that file 3 or fewer reports for the percentage of TRI sources that are not significant. These are distinct concepts, and EPA has not made any determination on the percentage of burden expended for TRI sources that are not significant.

2. COMMENTS RELATED TO FORM A BURDEN

Commenter: Consumer Specialty Products Association (CPSA) and Council of Industrial Boiler Owners (CIBO)

Comment: The commenters state that despite development of the Form A and frequent assurances from EPA that it would reduce the TRI reporting burden, EPA's figures from the Supporting Statement of the previous ICR (October 2000) indicate that the total burden for Form R and Form A between 1992 and 2000 nearly doubled from 4.9 million hours to 9.5 million hours. As a result, CSPA does not believe that EPA has reduced, to the extent practicable and appropriate at this time, the burden on persons providing the information being collected under EPCRA section 313. CSPA maintains that the number of "listed toxic chemicals and chemical categories" has increased from over 600 to over 650. CSPA maintains that this increase in burden has not been offset by any reduction.

Response: The table cited by the commenters displays changes to the number of responses and burden hours that were approved by OMB between 1992 and 1999. This table does not represent the actual burden of the Form R and Form A during this period, either in terms of actual number of responses or incurred burden. As EPA explained in the FR notices for the Form R and Form A ICR renewals and the supporting statements for these actions, the levels approved by OMB were subject to factors that inflated the apparent burden of the Form R and Form A Certification Statement collection instruments above what was actually incurred.

EPA has explained that the revised burden estimates are based on four major adjustments that improve public understanding of the actual burden imposed by reporting under EPCRA section 313. The first adjustment is to the number of responses. The burden estimates reflect actual numbers of affected facilities and reports submitted to EPA in the most recent reporting year (2000) rather than estimates of future reporting made prior to reporting that are subject to significant uncertainties. The second adjustment is to the unit burden hours. EPA has revised the estimate of unit burden hours for Form R and Form A Certification Statement completion in subsequent reporting years based on the actual reporting experience of affected facilities. These results replace engineering estimates that date to the inception of the program in the1980s. The third adjustment relates to annualization of reporting burden. In previous ICRs, the renewal period has coincided with programmatic changes in one or more years. Previous ICRs have been based on annualized estimates of burden (including time for rule familiarization and higher first year reporting burdens). Since there are no final rules pending at this time, this ICR renewal does not require annualized burden estimates to account for large upfront burdens associated with programmatic changes. The fourth adjustment relates to the adoption of TRI-ME, an automated reporting software package that simplifies the reporting process.

As these adjustments reflect, EPA has taken many steps to provide more accurate burden estimates and to reduce burden. EPA has undertaken burden reduction through chemical delistings, industry-specific guidance documents, enhanced electronic reporting, and the promulgation of an alternate reporting threshold. EPA continues seek opportunities to reduce reporting burden without damaging the informational content of the TRI program. EPA is developing additional reporting guidance which will simplify and ease reporting burdens and is improving the TRI-ME reporting software to include built-in calculation methodologies and error checking routines. EPA is also developing a single facility identification program for facilities that report to EPA and developing

guidance to facilitate more consistent use of chemical nomenclature, reporting units, and time frames across different programs. As a result, EPA has reduced, to the extent practicable and appropriate at this time, the burden on persons providing the information being collected under EPCRA section 313.

Comment: CSPA asserts that EPA has "conjured up" new Form A Certification Statement burden and cost estimates for the average facility. CSPA notes that the average facility must still expend 70 percent of the Form R burden to complete a Form A Certification Statement. CSPA asserts that the reduced burden and cost estimates for Form A has not resulted from EPA actions. CSPA is unconvinced of the accuracy of these data because CSPA claims that it is based on 9 facilities.

Response: EPA disagrees with this characterization of the process by which revised burden and cost estimates were developed. The actual process is described in detail in documents titled "Estimates of Burden Hours for Economic Analyses of the Toxic Release Inventory Program" and "Wage Rates for Economic Analyses of the Toxics Release Inventory Program" which are available in the public version of the official record for this action.

To estimate the revised Form A Certification Statement burden hours, EPA used a historic relationship between Form R and Form A activities. For Form A, the calculations needed to determine eligibility are a subset of the calculations necessary to complete Form R. Thus, the time required to calculate the annual reportable amount was estimated in previous ICRs by aggregating EPA's estimates of the time required to calculate each of the sections of Form R that are relevant to determining annual reportable amount. According to these estimates, calculations for a Form A Certification Statement take approximately 64 percent of the time of calculations for the Form R. Based on EPA's revision to the unit burden estimates for Form R calculations and form completion, EPA estimated that calculating an annual reportable amount for Form A will require an average of 9.3 hours for each listed toxic chemical that the facility must report under EPCRA section 313. EPA agrees that this is relatively small reduction from Form R unit burden considering how much less information the Form A Certification Statement provides.

To corroborate EPA's revised burden hour estimate, EPA contacted 9 facilities in April 2002 that filed Form As to inquire about the typical facility level burden associated with using the reporting form. The total facility level burden estimates were reported in ranges. Depending on whether the midpoint or maximum of the range was used, the average of facility-level burden hours per chemical certification was reported at 11.2 to 15.5 hours. EPA's revised estimate of 13.7 total hours for a facility certifying one chemical on a Form A Certification Statement falls within this range.

Comment: CSPA states that because the TRI-ME burden reduction estimate is based on two-year-old TRI-ME testing, it may not be representative of actual facility experiences.

Response: EPA agrees. Based on facility responses and on-going software development, EPA believes that facilities may actually experience more burden reduction than previously estimated. The

facilities that were contacted expected an additional 5 percent burden reduction in the following reporting year as they became more familiar with the software. Also, at the time, TRI-ME was still in a pilot phase and additional development occurred. However, since EPA does not have data to quantify additional burden reductions, EPA is not modifying the current assumption that facilities using TRI-ME to complete Form A experience an average 25 percentage burden reduction in the activities of Calculations/Certification and Recordkeeping/Mailing.

Comment: CSPA takes exception to EPA's presentation of Form A Certification Statement reporting levels. CSPA asserts that EPA did not present the Form R data in the supporting statement for the Form A Certification Statement to decrease the perceived TRI reporting burden.

Response: EPA's presentation was dictated by the fact that Form R and Form A are separate Information Collection Requests. The total burden estimates for each collection are available in the FR notices and supporting statements for each ICR.

Practical Utility/Users of the Data

Commenter: The Consumer Specialty Products Association (CSPA)

Comment: The commenter asserts that EPA has misread the application of section 2(b) Practical Utility/Users of the Data" in the Form A Certification Statement Supporting Statement, by referring to the ICR on Form R to "provide specific examples of some of the actual uses of TRI data." Further, the commenter asserts that the Agency and special interest groups refuse to recognize that there are myriad local, state and federal programs that gather relevant data and provide it to communities and their representatives.

Response: EPA agrees that section 2(b) does not deal specifically with the utility and use of the Form A Certification Statement, but discusses the overall utility of TRI data as a whole. The Form A Certification Statement is used by facilities who meet EPCRA section 313 threshold requirements but also meet the criteria for the alternative threshold of 1 million pounds and do not exceed this threshold. Facilities who meet these threshold requirements "certify" that the facility is not subject to Form R reporting for a specific toxic chemical. Since no actual "data" are supplied with alternate threshold reporting, the Agency refers to TRI reporting as a whole in section 2(b) when discussing practical utility and usage of TRI "data".

EPA also agrees with the commenters assertion that many local, state and federal programs gather relevant data that are provided to communities and community representatives, however, the data that are supplied to communities through the TRI Program are unique. Other EPA databases and other state and local databases simply cannot substitute for the multimedia data that is reported under EPCRA Section 313 and the PPA. Other available databases encompass much more limited chemical

universes and do not substitute for TRI data in terms of frequency of reporting, comprehensiveness of data reported, and the ease of use and access that the TRI program provides to the public.

Increase in Form A Certification Statement Usage

Commenter: The Consumer Specialty Products Association (CSPA)

Comment: The commenter objects to statements in the Form A Certification Statement Supporting Statement that refer to increases in the level of use of the Form A Certification Statement.

Response: EPA agrees that Form A Certification Statement usage has remained fairly constant over the years that the alternate threshold option has been available to TRI reporting facilities, although EPA's previous estimates projected an increase in Form A Certification Statement usage of 10% per year between 1998 and 2002. EPA intends to continue its outreach to the regulated community to make facilities aware of the Form A Certification Statement reporting option. Some facilities may still choose not to use the Form A Certification Statement in the future (because, for example, they may want to provide full information to the community), the option to reduce reporting burden by using the Form A Certification Statement is still open to them. Currently, two-thirds of TRI filers who are eligible to use alternate threshold reporting take advantage of that option. Two-thirds is a sizable majority. EPA cannot force facilities to take advantage of Form A Certification Statement reporting if they choose not to.

Raising Thresholds for the Form A Certification Statement

Commenters: American Chemistry Council (ACC), Consumer Specialty Products Association (CSPA), Council of Industrial Boiler Owners (CIBO), (MIRC), International Dairy Foods Association (IDFA)

Comment: The commenters suggest that EPA raise the alternate threshold eligibility waste criterion and/or activity thresholds to increase the use of alternate threshold reporting - the Form A Certification Statement.

Response: The EPA disagrees. Under EPCRA section 313(f)(2), EPA may revise thresholds only to the extent that the revised threshold obtains reporting on a substantial majority of total releases of the chemical at all facilities subject to EPCRA section 313. For purposes of determining what constitutes a "substantial majority of total releases," EPA interprets the language in section 313(f)(2), "facilities subject to the requirements of [section 313]," to refer to those facilities that fall within the category of facilities described by sections 313(a) and (b)–i.e., the facilities currently reporting. Subsection (a) lays out the general requirement that "the owner or operator of facilities subject to the requirements of this

section shall" file a report under EPCRA section 313. Subsection (b) then defines the facilities subject to the requirements of this section:

> [t]he requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20-39,... and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic chemical established under subsection (f) of this section during the calendar year for which a toxic chemical release form is required under this section.

Thus, in revising the reporting threshold criterion (500 pounds of total production-related waste) for the alternate threshold, EPA must ensure that under a new alternate threshold, a substantial majority of releases currently being reported will continue to be reported. The Agency has information to indicate that it would not be able to meet this standard were it to increase the Form A Certification Statement threshold and/or the criterion for the alternate threshold. This information is included in EPA's response to OMB's January 18, 2001 Terms of Clearance notice for the ICR renewal of the Form A Certification Statement. This Terms of Clearance response is included as attachment F of the Supporting Statement for the Form A Certification Statement ICR Renewal, EPA no. 1704.06, OMB Control No. 2070-0143 which can be viewed in the EPA docket under docket number OEI-10016 and on the EPA TRI website at www.epa.gov/tri.

Further, it is important for the public to know detailed information about even relatively small waste quantities from facilities that handle high volumes of listed toxic chemicals. Efficient toxic chemical management practices of these facilities provide an example to other facilities of these practices. Also, if such facilities continue to be required to use the Form R, the chances of facilities that manage large volumes of listed toxic chemical inappropriately using the Form A Certification Statement would be reduced.

3. ADOPTION OF ALTERNATE REPORTING SCHEDULES

Commenter: American Chemistry Council (ACC)

Comment: The commenter asks that the Agency consider adopting alternate reporting schedules for the Form R.

Response: EPA has given consideration to alternate year reporting and does not believe that it currently is able to adopt the commenter's suggestion. To adopt an alternate year reporting option, EPA must modify the TRI reporting frequency to a two year reporting cycle (ie., facilities would only report TRI data every other year) in accordance with the requirements laid out in section 313(i). Although biennial reporting appears on the surface to provide a significant avenue for reducing burden

for TRI reporters, statutory findings and the process required to achieve the modification do not support it. First, to meet statutory requirements on modifying the reporting frequency, EPA must first notify Congress and then wait to initiate the rulemaking to propose the modification for at least 12 months. In addition, EPA must find:

(A) ...that the modification is consistent with the provisions of subsection (h) of [section 313] based on -

(i) experience from previously submitted toxic chemical release forms,
(ii) determinations made under paragraph (3).]

Paragraph (3), in turn, provides that EPA must determine

(A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal government, States, local governments, health professionals and the public.

(B) The extent to which information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through as State program.

(C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.

EPA is concerned about the availability of information that would allow the Agency to make the requisite findings under paragraph 3(B); for example, EPA has received only 1 year of data on lead and lead compounds from facilities reporting at the lower thresholds, and the Agency believes that information reported annually to the TRI program is not "readily available" from any existing source. For example, other EPA databases simply cannot substitute for the multimedia data that is reported under EPCRA Section 313 or PPA section 6607. The other existing EPA databases encompass much more limited chemical universes, do not substitute for TRI data in terms of frequency of reporting, and the ease of use and access that the TRI program provides to the public and contain data estimated by EPA or the State rather than actual data estimates from facilities themselves. EPA notes that the commenter has provided no information that would help the Agency to make any of these findings. Finally, EPA requested comment on a similar option during the PBT rulemaking. See, 64 Fed. Reg. 688, 718-719 (January 5, 1999). The majority of commenters expressed concern that such an option would introduce confusion for the regulated community and data users and would not significantly reduce burden. Further they expressed concern that it could discourage facilities from establishing common standard procedures for data collection. Commenters also expressed concern that it would result in data gaps, undermining data consistency and tracking. Many commenters believed that annual reporting is a fundamental attribute and benefit of TRI. In addition, as noted elsewhere, EPA has introduced burden reduction through TRI-ME, the alternate threshold, and from deletion of chemicals.

4. STAKEHOLDER INVOLVEMENT

Commenter: The Consumer Specialty Products Association (CSPA)

Comment: We are unaware of any recent EPA activities that justify the assertion that EPA continues to work with affected parties to identify opportunities for further burden reduction.

Response: As a continuation of its outreach efforts to improve TRI processes and reduce reporting burden, EPA's Toxic Release Inventory Program has initiated a stakeholder dialogue to get feedback on the various aspects of the TRI Program and to help shape the future direction of the TRI program.

Over the years, EPA conducted numerous stakeholder meetings to focus on burden reduction aspects of the TRI program. Following industry expansion rulemaking, EPA initiated an extensive dialogue with stakeholders regarding ways to improve TRI and reduce reporting burden by establishing an advisory committee under the National Advisory Council for Environmental Policy and Technology (NACEPT), and by conducting a series of public meetings around the country in 1998. One of the recommendations from the NACEPT committee to create an expert software system called the Toxics Release Inventory - Made Easy (*TRI-ME*) to assist facilities in TRI reporting was endorsed in December 1998. Additionally, recommendations made by stakeholders on modifications to the annual data release documents were made. Later in April 2000, in response to the OMB's initiative to look at burden reduction efforts, and more recently in January 2001, EPA conducted additional public/stakeholder meetings soliciting feedback on TRI processes.

Recently, EPA has received a number of requests from stakeholders for EPA to speed up the processing of the TRI data, to increase the tools available for using the TRI data and to recharacterize the TRI, particularly for certain types of releases. This new stakeholder process is part of a process where the program has solicited stakeholder input on various aspects of the TRI program. This stakeholder dialogue and the commencement of a 60-day on-line public dialogue was announced through an FR notice on October 15, 2002 (67 FR 63656).

Instructions for participating in this dialogue and relevant documents are posted at TRI's "Virtual Public Meeting" website established for the stakeholder effort www.epa.gov/tri/programs/stakeholders/outreach.htm. The background documents will also be available for review through the public docket. Comments will be accepted for a period of 60 days through the website and public docket, and the comments received will be made available through a final summary document.

5. E-MAIL ADDRESS FOR TECHNICAL CONTACT ON FORM R AND FORM A CERTIFICATION STATEMENT

Commenters: Environmental Technology Council (ETC) and the Association Connecting Electronic Industries (IPC)

Comment: Although the EPA received no comments in opposition to the proposed collection of e-mail addresses for facility technical contacts on the Form R and the Form A Certification Statement, the commenters expressed concerns regarding the provision of privacy protection for email addresses. Questions that were posed by the commenters concerning the collection of email addresses included the following: What is the regulatory justification for the request for email addresses? How will EPA protect the privacy of email addresses? Is EPA planning on providing submitters' e-mail addresses to the public? Will submitters' email addresses be used for other purposes or other EPA programs? How will EPA legally protect email addresses from Freedom of Information Act Requests? How will EPA prevent illicit uses of any email list that is compiled? Who will be responsible for updating changes in email addresses, and will updating changes in email addresses be an additional burden for which facilities will be liable? What will EPA do to ensure that email communications are received?

Response: EPA has proposed to add an additional information field for the email address of the facility technical contact to the Facility Identification sections of TRI Reporting Form R and the Form A Certification Statement. EPA plans to treat the email addresses supplied as it does the technical contact name and technical contact phone number in sections 4.3 of both reporting forms. EPA presently does not include in the public TRI database nor does it otherwise on its own initiative divulge to the public the telephone number of a facility's technical person - the individual that the Agency contacts if it has questions about the facility's data. Specifically, the technical contact name and phone number are not included in any of the TRI Program's public data products including Envirofacts, TRI Explorer, and the annual Public Data Release. However, in the event that such information is requested pursuant to the Freedom of Information Act ("FOIA"), the information is not protected from disclosure under FOIA Exemption 6. The technical contact name and phone number are currently available internally and can be accessed for use by other EPA Program offices. The email address data field will be made available internally, but inaccessible externally.

Security procedures have been established for the TRI System (TRIS) where information from the TRI Reporting Forms is first entered. These security procedures prevent illicit uses of the TRI data. The facility would be responsible for updating changes to the email address of the facility's technical contact, just as it now updates changes to the name and phone numbers of the facility's technical contact. EPA expects that the burden that facilities will incur for making changes to the email address will be minimal. The procedure for ensuring that email communications are received will be the same as procedures for U.S. mail - if an email is returned as undeliverable, EPA will try to find a new address. If an email message is not returned, EPA will assume that it has been received.

6. PROBLEMS ENCOUNTERED WITH TRI-ME REPORTING SOFTWARE

Commenter: National Association of Manufacturers (NAM)

Comment: The commenter asserts that facilities installing TRI-ME required specialized IT support to install the software on the corporate system.

Response: Some facilities may have required IT support to install TRI Reporting Software on corporate systems because of company restrictions on software installation by employees. At these companies, employees may have needed some assistance or permission from their IT department to install the software. For facilities without such restrictions, installation of the TRI Reporting Software was fairly simple. In addition, EPA provided additional assistance through the TRI Software Support Hotline.

Comment: The ATRS2001 software distributed in March 2002 on CD did not treat lead metal as a PBT. It did treat lead compounds as PBT. Therefore, software patches needed to be downloaded and data re-validated. Facilities that were conscientious and trying to get the Form Rs done early had to rework their data.

Response: EPA was made aware of this problem in mid-April and offered users two alternatives to overcome it for those reporting lead in decimal quantities. First, users had the option of using the TRI-ME Reporting Software which handled lead reporting correctly. A second alternative offered was for users to email their ATRS2001.db file to EPA for a modification which would then allow lead to be reported as a PBT. Approximately two dozen users chose this option and the turn-around time was generally less than one business day. To our knowledge, all users that experienced the problem were assisted and were able to submit their data to EPA.

Comment: Many companies could not figure out how to "collaborate" or "trade"database files between the company and their consultant.

Response: Several users have mentioned this issue. In response, EPA is developing a new feature for the next version of the TRI - Made Easy (TRI-ME) Reporting Software that will allow users to create HTML versions, or some other read only file format, to enable users to share draft forms without needing to have the software installed on their computer.

Comment: Submissions over the EPA CDX did not work in some cases.

Response: Some users did experience problems submitting their data via CDX. Based on user calls to the TRI Software Support Hotline, EPA was able to identify the problem and provide a diagnostic release to the users that experienced this same problem. To our knowledge, the diagnostic release addressed the issue for these users. However, most users did not have any trouble submitting their data to EPA via CDX. In fact, as of September 2002, EPA has received 7,791 submissions via CDX.

Comment: The help function contained more than 700 topics that were not listed alphabetically and instructions sent many users in circles to find needed information.

Response: The commenter is unclear whether their difficulty is with the TRI-ME Help function or the TRI Assistance Library. Both are listed under "help" in the tool bar of TRI-ME. Both are searchable and contain lists of topics/documents covered. EPA is willing to consider suggestions from users on how to improve the help function.

Comment: The TRI-ME software was developed for Internet Explorer v6, but some companies have not yet upgraded to v6.

Response: The TRI-ME software was developed to be used with Internet Explorer version 5.5. In fact, EPA distributed the TRI Reporting Software CD with IE 5.5. Some users may have chosen to upgrade their IE version directly from the Microsoft website. If they contacted the Microsoft website directly, they likely were encouraged to upgrade to IE 6.0 given that this was the version of IE that Microsoft was distributing at that time.

Comment: EPA needs to correct current problems with TRI-ME and should conduct testing and engage in consultation with the regulated community.

Response: First, EPA does plan to make some enhancements to the software for reporting year 2002 and the Agency will consider all suggestions received from users. Although EPA will do its best to implement all user suggested enhancements, the Agency will not likely have the resources to implement all of the suggestions received.

In addition, EPA did conduct a beta test of TRI-ME for reporting year 2001. Thirty-three industry representatives participated in this beta test. Industry participation in the beta testing of TRI-ME for reporting year 2002 will again be requested. Also, EPA encouraged TRI-ME users to comment on the software by providing an option within the software to make comments to EPA and a website for users to submit comments. Through these mechanisms, EPA received close to 100 comments and suggestions from users of the software. EPA will continue to work with the regulated community to beta test the software and make suggestions about future enhancements to the software.

7. INFORMATION QUALITY GUIDELINES

Commenter: National Mining Association (NMA)

Comment: The commenter asserts that EPA is under an obligation to incorporate into its rationale supporting ICR renewal, "a basic standard of quality (including objectivity, utility, and integrity)..."as set forth in the Office of Management and Budget (OMB) Data Quality Guidelines (67 FR 8452 at 8458,

Feb. 22, 2002) and further reinforced in a June 10 memorandum from John D. Graham, Director of OMB's Office of Information and Regulatory Affairs, on "Agency Draft Information Quality Guidelines."

Response: EPA has developed EPA Information Quality Guidelines to ensure the utility, objectivity and integrity of information that is disseminated by the Agency. The information supporting this ICR is consistent with all appropriate EPA policies, including EPA's Information Quality Guidelines. In particular, the EPA Agency-wide Quality System helps ensure that EPA organizations maximize the quality of information disseminated by the Agency. The Quality System is documented in EPA Order 5360.1 A2, *Policy and Program Requirements for the Mandatory Agency-wide Quality System* and the *EPA Quality Manual for Environmental Programs* 5360 A1, May 2000. The information supporting this action is also consistent with *EPA's Guide to Writing Information Collection Requests Under the Paperwork Reduction Act of 1995,* revised 2/99.

It is EPA's intention that collection of information under this ICR will result in information that will be collected, maintained, and used in ways consistent with both EPA's Information Quality Guidelines and the OMB Information Quality Guidelines. Since the information identified in this ICR has not yet been collected and disseminated, there is currently no dissemination of information to which the Guidelines would apply. However, EPA intends to take these comments into consideration in its pre-dissemination review when the Agency prepares to disseminate information collected under this ICR.

8. DELIST NO-RELEASE OR LOW VOLUME CHEMICALS

Commenter: American Chemistry Council (ACC)

Comment: Consider delistings the no-release or low-volume release chemicals.

Response: EPCRA section 313(d)(2) establishes criteria for listing and delistings chemicals. This criteria is mainly focused on the hazards associated with the chemical. There are no provisions within these criteria to delist a chemical simply because it has no or low releases. There is also no guarantee that releases will not increase in the future as new uses are found for chemicals or as new facilities start using them. If the commenter believes that a no or low release chemical does not meet the listing criteria of EPCRA section 313(d)(2) then they can petition the Agency under EPCRA section 313(e) to have the chemical delisted. It should also be noted that information on no or low release chemicals is of value. It identifies facilities that, while exceeding reporting thresholds, have controlled their releases.

9. EPA's EPCRA 313 LIST REVIEW

Comment:

One commenter recommended that EPA continue with its ongoing [EPCRA section 313] list review effort.

Response:

EPA is currently attempting to identify any chemicals that do not meet the statutory criteria for listing on the EPCRA section 313 list of toxic chemicals. EPA will propose to delist any chemical that EPA believes do not meet listing criteria.

10. EXEMPTING CHEMICALS INCINERATED FOR ENERGY RECOVERY OR RECYCLING FROM THE FORM A CERTIFICATION STATEMENT REPORTABLE QUANTITY DETERMINATION

Comment: OMB Watch and the Working Group on Community Right-to-Know submitted a response for both the Form R and the Form A Certification Statement Information Collection Request renewals. The commenters expressed support for the ICR renewals, stating how the TRI has been a "demonstrable success that illustrates how effective information management and disclosure can be a successful force for preventing pollution." The commenters oppose raising reporting thresholds so that facilities other than small producers of toxic releases can use the Form A Certification Statement. The commenters also oppose changes in the alternate threshold criterion (currently 500 pounds of production-related waste) determination that would exempt chemicals that are incinerated for energy recovery or recycled. Their belief is that this change would open a sham "recycling" loophole in the TRI and undermine the national source reduction goal established by the Pollution Prevention Act.

Response: EPA agrees with these comments.

11. ELIMINATION OF RECYCLED MATERIALS FROM TRI REPORTING

Commenter: National Paint and Coatings Association, Inc. (NPCA)

Comment: The commenter claims that EPA should no longer require the reporting of toxic chemicals sent off site for recycling. It contends that eliminating the reporting of recycled materials would lower the reporting burden on facilities and encourage materials recycling.

Response: Section 6607 of the Pollution Prevention Act of 1990 (PPA) specifically requires facilities that must comply with section 313 of EPCRA to provide source reduction and recycling data. PPA section 6607(b)(2) requires reporting of "[the amount of the chemical from the facility which is recycled (at the facility or elsewhere) during such calendar year, the percentage change from the previous year, and the process of recycling used." Thus, quantities of toxic chemicals recycled by a facility must be included in TRI reporting.

12. EXCLUDING DATA FOR TOXIC CHEMICALS THAT ARE RECYCLED OR USED FOR ENERGY RECOVERY

Commenter: The Council of Industrial Boiler Owners (CIBO) and the Consumer Specialty Products Association (CSPA)

Comment: The commenters request that EPA no longer collect data on the quantity of toxic chemicals that are recycled or used for energy recovery.

Response: Section 6607 of the Pollution Prevention Act of 1990 (PPA) specifically requires facilities that must comply with section 313 of EPCRA to provide source reduction and recycling data. Sections 6607(b)(2) and (8) require a facility to report the amounts of toxic chemicals recycled and treated. Thus, quantities of toxic chemicals recycled by a facility must be included in TRI reporting. In addition, the PPA requires that facilities report on quantities treated. EPA considers the combustion of a toxic chemical for energy recovery to have aspects of both recycling and treatment. By separating quantities used for energy recovery from quantities recycled or treated, TRI data users can better monitor a facility's progression through the pollution prevention hierarchy. Further, if EPA excluded these materials from reporting under the PPA, facilities might incorrectly report this activity as a source reduction activity by virtue of the fact that it is not a reportable waste management activity on the Form R.

13. RCRA SUBTITLE C: REPORTING OF RELEASES

Commenter: Environmental Technology Council, American Iron and Steel Institute, Steel Manufacturers Association, Micron Technology, Inc., Metals Industry Recycling Coalition, National Paint & Coatings Association, Non-Ferrous Founders' Society

Comment: The commenters assert that the Agency has unlawfully expanded the definition of release to include disposal of EPCRA section 313 listed toxic chemicals into RCRA subtitle C facilities. The commenters contend that such facilities dispose of hazardous waste in accordance with the Resource Conservation and Recovery Act and such waste is not actually released at all. The commenters express their concern that reporting of such releases misrepresents risks that may exist in a community near a particular facility. The commenters suggest changing EPA's definition of release to include "an uncontrolled discharge to an environmental media." In addition, in order to quickly address the concerns relating to the misrepresentation of transfers off-site to RCRA subtitle C landfills, one commenter has requested that EPA make two changes to the Form R including: developing a new category numbered 8.8 entitled "Quantity Disposed Into Subtitle C Landfills Off-site," and change in the Form R instructions to exclude transfers off-site to RCRA Subtitle C Landfills from the Off-site Release category.

Response: EPA believes that EPCRA section 313 does authorize the Agency to require that the land-

based disposal of toxic chemicals, including those disposed of in RCRA subtitle C facilities, be reported on Form R as a release. EPCRA Section 313(g)(1)(C)(iv) requires reporting on the "annual quantity of the toxic chemical entering each environmental medium." The statute defines release as "any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical." The Conference Report further provides that "[r]eporting on releases to each environmental medium under subsection (g)(1)(C)(iv) . . . shall include, at a minimum, releases to the air, water (surface water and groundwater), land (surface and subsurface), and waste treatment and storage facilities." Conf. Rep. at 298. In addition, Representative Edgar, one of the principle authors of EPCRA stated:

> With respect to the contents of the toxic release form, estimates of releases into each environmental medium must be provided. This shall include any releases into the air, water, land, as well as releases from waste treatment and storage facilities . . . *Similarly, all toxic chemicals dumped into land disposal facilities must be reported* whether or not such facilities are regulated under the Resource Conservation and Recovery Act and whether or not such facilities are onsite or offsite. [Emphasis Added, 132 Congressional Record H9561-03 (daily ed. Act. 6, 1986)]

For the reasons discussed above, EPA believes that simply excluding disposal from EPA's interpretation of the statutory definition of release would be inconsistent with EPCRA. In any event, the kind of changes that the commenters have proposed are substantive changes that could not be made in the context of an information collection request response, but which would instead need to go through notice and comment rulemaking. EPA plans to present the specific issue of breaking out the different types of releases within the release category in the Form R as part of the Phase 2 of the online Stakeholder Dialogue process (http://www.epa.gov/tri/programs/stakeholders/future_direction.htm) as well as part of a rulemaking effort to address the statutory requirements for Section 6607 of the Pollution Prevention Act.

To allow users to more clearly distinguish off-site releases, particularly transfers to RCRA Subtitle C landfills, EPA is modifying the applicable codes for Form R part II, Section 6.2, column C "Type of Waste Treatment/Disposal/Recycling/Energy Recovery." EPA is replacing Code M72 - Landfill/Disposal Surface Impoundment with the following 3 codes: M63 - Surface Impoundments; M64 - Other Landfills; and M65 - RCRA Subtitle C Landfills. EPA believes this change will aid users of the data in distinguishing the different types of off-site releases. Further, this breakout mirrors the breakout for on-site land releases in Form R, Part II, section 5.5.

14. RCRA SUBTITLE C: DOUBLE COUNTING

Commenter: Environmental Technology Council, American Iron and Steel Institute, Micron Technology, Inc., Metals Industry Recycling Coalition, National Paint & Coatings Association, Non-

Ferrous Founders' Society

Comment: The commenters assert that, due to the fact that both the facility sending a chemical to a RCRA subtitle C landfill and the RCRA subtitle C landfill are required to report to TRI, the TRI database effectively "double-counts" actual releases to the environment. For example, facility A generates 50 pounds of mercury and sends 40 pounds off-site to disposal to a RCRA subtitle C landfill. For reporting purposes, both facilities would be required to report 40 pounds of mercury to TRI. The commenters believe that such a requirement results in misleading and inaccurate accounting of releases of chemicals.

Response: EPA believes that reporting to TRI is not misleading and inaccurate. At the facility level, "double counting" does not exist. Only when TRI data are aggregated (e.g., national, state) is there a possibility of double counting. To address the issue of double counting, when presenting the data at the national and state level, the Agency has eliminated double counting by backing out the amount that is reported by the generator and the RCRA subtitle C landfill. This process is fully automated and requires minimal time and resources.

15. PUBLIC MISCONCEPTIONS OF TRI RELEASES

Commenter: Environmental Technology Council, American Iron and Steel Institute, Micron Technology, Inc., Metals Industry Recycling Coalition, National Paint & Coatings Association, Non-Ferrous Founders' Society

Comment: The commenters contend that, although the TRI definition of release does not include quantities reported under recycling, energy recovery, or treatment, the press and public often misinterpret these amounts as being released to the environment.

Response: EPA believes that the press and the public correctly delineate between amounts released and other waste management activities (i.e., recycling, energy recovery, and treatment) reported by facilities to TRI. When presenting the TRI data, EPA makes a significant effort to define key TRI reporting terms/definitions, and limitations of the data. EPA will continue to work to develop information to provide proper context to the TRI data and to continue to work with both the public and press to assist in understanding the limitations of the TRI data. In fact, EPA initiated a TRI stakeholder dialogue in which it is soliciting comment on these issues. See the October 15, 2002 Federal Register Notice, 67 FR 63656, and www.epa.gov/tri/programs/stakeholders/outreach.htm.. In the near future, the Agency intends to initiate rulemaking to adopt a revised interpretation that will allocate extraction and beneficiation activities between these two statutory terms.

16. INCLUSION OF ACID AS A RELEASE IN DAIRY PROCESSING

Commenter: International Dairy Foods Association (IDFA)

Comment: The commenter asserts that food processing facilities have no releases of certain listed acids, but are required to file a Form R (as opposed to being eligible for the alternate threshold of 1 million pounds and the Form A Certification Statement) based upon their management of those acids. The commenter contends that the Form A Certification Statement reportable quantity should only measure quantities released, as opposed to quantities released and managed as waste, thereby allowing all facilities with releases below that reportable quantity to use the Form A Certification Statement.

Response: EPCRA 313 states that a facility must file a Form R report if the facility manufactures, processes, or otherwise uses any EPCRA section 313 chemical in quantities greater than the established threshold in the course of a calendar year. One of the requirements of EPCRA section 313 is that facilities report "For each waste stream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that waste stream" [EPCRA section 313 (5)(1)(c)(iii)]. The Pollution Prevention Act (PPA) requires facilities required to report under EPCRA to also report "the quantity of the chemical entering any waste stream (or otherwise released into the environment) prior to recycling, treatment or disposal..." (PPA 6607 (b)(1)) and "The amount of the chemical from the facility which is treated..." [PPA section 6607(b)(8)]. By basing the reporting obligation under the PPA on the EPCRA thresholds, Congress created a strong legal link between the two statutes and the information collected under the two statutes. Therefore, EPA believes it would be inconsistent with the statutory requirements EPCRA and the PPA to adjust the reportable quantity so as eliminate consideration of information required to be reported by the PPA and EPCRA. EPA believes that PPA data are an enhancement of the basic data gathered by EPCRA section 313. Further, information collected on waste management activities provides the public with a more complete picture of the quantities of toxic chemicals in waste streams, which has the potential for source reduction and this encourages facilities to practice source reduction - the primary goal of PPA. Therefore, EPA believes it is important to apply the reportable quantity to both quantities of toxic chemicals released and quantities of toxic chemicals managed as waste.

17. COMMENTS RELATED TO MINING INDUSTRY REPORTING

Commenter: The National Mining Association (NMA)

Comment: The commenter states that a federal court enjoined EPA from applying the TRI definition of processing to facilities in SIC codes 10 and 12. NMA asserts that the EPA incorrectly maintains that the Court's decision has caused no change in the mining industries TRI reporting responsibilities.

Response: The Court's decision does not relieve facilities of their obligation to report under EPCRA section 313 regarding their preparation of toxic chemicals. EPCRA section 313 clearly identifies "preparation" as a threshold activity that triggers reporting. (See, 42 U.S.C. §§ 11023(a), (b)(1)(C)) Facilities in covered TRI SIC codes have a statutory obligation to determine how to report their preparatory activities in compliance with EPCRA section 313's requirements. EPA's interpretation of the court's decision can be found at http://www.epa.gov/tri/lawsandregs/nma_4-23_response.htm.

18. COMMENTS REGARDING PBT CHEMICAL REPORTING

The *De Minimis* Exemption and PBT Chemicals

< Background on the *de minimis* exemption for EPCRA section 313 chemicals:

The *de minimis* exemption allows facilities to disregard certain minimal concentrations of toxic chemicals in mixtures or other trade name products they process or otherwise use from determinations of whether reporting thresholds have been exceeded, as well as release and other waste management calculations (40 CFR 372.38(a)).

EPA eliminated the *de minimis* exemption for EPCRA section 313 chemicals that have been classified by EPA as persistent, bioaccumulative toxic (PBT) chemicals, including lead and the lead compounds category, except for lead contained in stainless steel, brass, or bronze alloys (40 CFR 372.38(a)). This means that facilities are required to include all amounts of lead compounds or lead (except for lead in stainless steel, brass, or bronze alloys as summarized in Table 3-3) in threshold determinations, and all amounts of lead or the metal portion of lead compounds in release and other waste management calculations, regardless of the concentration of lead or lead compounds in mixtures or trade name products (40 CFR 372.38(a)). However, the elimination of the *de minimis* exemption for reporting PBT chemicals does not affect (negate) the applicability of the *de minimis* exemption to the supplier notification requirements (e.g., for facilities that manufacture or sell toxic chemicals as described in 40 CFR 372.45), or to threshold or release calculations performed only on lead contained in stainless steel, brass, or bronze alloys. Thus, suppliers of lead or lead compounds may continue to use the *de minimis* exemption for supplier notification purposes, and facilities may continue to use the *de minimis* exemption for threshold or release calculations performed only on lead contained in stainless steel, brass, or bronze alloys. For lead contained in stainless steel, brass, or bronze alloys, the *de minimis* level is 0.1%. For supplier notification requirements, the *de minimis* levels are as follows: for lead, 0.1%; for lead compounds that are inorganic, 0.1%; for lead compounds that are organic, 1% (40 CFR Š 372.38(a)).

Use of the *De Minimis* Exemption for PBT Chemicals

Commenter: American Iron & Steel Institute (AISI)

Comment: For PBT chemicals, the USEPA has removed the *de minimis* exemption for determining TRI reporting applicability but not for determining supplier notification reporting applicability. Thus, concentrations of PBT chemicals in raw materials are often not available. One member company reported that at an USEPA TRI training seminar, when questioned how a facility is to comply with PBT reporting (given the lack of supplier notification data), the USEPA representative stated a facility must document that it has exhausted all means of information gathering and has the supporting material to justify its non-PBT reporting status. As a result, a facility must expend many hours reviewing USEPA guidance documents, attending seminars, reviewing other sources of information, etc. to determine the

PBT chemical concentrations in raw materials in an attempt to complete threshold determinations and accurate release estimates. This is an extremely labor-intensive effort that has been grossly underestimated by USEPA. In making this point, we do not wish to further complicate and increase the burden associated with supplier notification requirements. Re-instituting the de minimis exemption for PBT chemicals will alleviate this burdensome requirement. Furthermore, no additional chemicals currently under investigation by the National Academy of Sciences should be given PBT status.

Response: EPA responded to the issue of a *de minimis* exemption in the October 1999 final rule that lowered the reporting threshold for PBT chemicals (see 64 FR 58727). Regarding supplier notification, the commenter appears to believe that if there were supplier notification for PBT chemicals then facilities would not have to gather any other supporting material in order to determine whether or not they are required to report. This may be incorrect. While information from suppliers is helpful in identifying TRI chemicals, including PBT chemicals, the information from suppliers is not the only information available to facilities and is not the only information that facilities should consider. Regardless of whether or not facilities obtain information from suppliers, they must still use all readily available data or, where such data does not exist, reasonable estimates to make their threshold determinations and release calculations. Therefore, even if there were a *de minimis* exemption for PBT chemicals, the information from suppliers would not be the only information that a facility would consider.

Justification for the Elimination of the *de minimis* Exemption for Lead and Lead Compounds

Commenter: Non-Ferrous Founders' Society

Comment: The commenter claims that EPA's elimination of the *de minimis* exemption for lead and lead compounds was not supported by any defensible justification. The reasons given by the commenter for this position are essentially identical to those comments pertaining to removal of the *de minimis* exemption received by EPA during the public comment period for the proposed rule for lead and lead compounds.

Response: EPA disagrees with the commenter. During the public comment period for the proposed lead rule, EPA received comments regarding *de minimis* exemption that are identical to the comment above. In the Response-to-Comment Document of the EPA Final Rule for Lead and Lead Compounds (66 FR 4500), the Agency has responded to the reasons given by the commenter for his position that EPA's elimination of the *de minimis* exemption for lead and lead compounds is not supported by any defensible justification. See Attachment A of this ICR Response to Comments document for excerpts from the Final TRI Lead Rule Response-to-Comment Document that pertain to elimination of the *de minimis* exemption for lead and lead compounds.

Comments Pertaining to the Restrictions from the Use of the Form A Certification Statement for PBT Chemical Reporting

Background: Facilities that exceed EPCRA section 313 reporting thresholds for a chemical that is listed on the EPCRA section 313 list of toxic chemicals and that have a total annual reportable amount (equivalent to production related waste)of 500 pounds or less are eligible for an alternate manufacture, process, or otherwise use threshold of 1million pound. If they also do not exceed the alternated threshold, they may certify to EPA on a Form A Certification statement that they are not required to submit a TRI Form R for that chemical. (40 CFR 372.27).

EPA has excluded EPCRA section 313 persistent, bioaccumulative toxic (PBT) chemicals, including lead and the lead compounds category (except for lead contained in stainless steel, brass, or bronze alloys) from eligibility for filing a Form A Certification Statement. (40 CFR 372.27(e)). Therefore, submitting a Form A Certification Statement rather than a Form R is not an option for reporting releases and other waste management quantities of lead and lead compounds. Use of the alternate threshold of 1 million pounds and Form A Certification Statement is permissible, however, for lead contained in stainless steel, brass, or bronze alloys. For other alloys that contain lead the 100 pound reporting threshold applies and the alternate threshold of 1 million pounds and Form A Certification Statement cannot be used.

Commenter: Society of Glass and Ceramic Decorators, Non-Ferrous Founders' Society

Comment: The commenters claim that EPA's elimination/restriction on the use of the alternate threshold of 1million pounds and the Form A Certification Statement for lead and lead compounds is inappropriate, and will greatly increase burden to businesses. The reasons given by these commenters for their positions are essentially identical to those comments pertaining to EPA's exclusion of the Form A Certification Statement option for lead and lead compounds received by EPA during the public comment period for the proposed lead rule.

Response: EPA disagrees with the commenters. During the public comment period of the proposed lead rule, EPA received comments regarding the alternate threshold of 1 million pounds and the Form A identical to the those of commenters above. In the Response-to-Comment Document of the Final TRI Lead Rule, the Agency has responded to the reasons given by the commenters for their position that EPA's exclusion of the alternate threshold of 1 million pounds Form A Certification Statement option for lead and lead compounds is inappropriate and will greatly increase burden. See Attachment A for excerpts of those responses.

Comments Pertaining to Deferral of Only Certain Lead-Containing Alloys (i.e., Brass, Bronze, and Stainless Steel) from the 100-Pound Reporting Thresholds.

Background: The final TRI lead rule lowered the 25,000 pound and 10,000 pound reporting thresholds for lead and lead compounds to 100 pounds, with the exception of lead contained in stainless steel, brass, and bronze alloys. For stainless steel, brass or bronze alloys that contain lead, the quantity of lead contained in these alloys is still applied to the 25,000 pound and 10,000 pound

reporting thresholds. These three alloys, when they contain lead and discussed in the context of the TRI lead rule, are referred to as the "qualified alloys".

EPA deferred on lowering the 25,000 pound and 10,000 pound reporting thresholds for lead when it is in stainless steel, brass, and bronze alloys because the Agency is currently evaluating a previously submitted petition as well as comments received in response to previous petition denials that requested the Agency to revise the EPCRA section 313 reporting requirements for certain metals contained in stainless steel, brass, and bronze alloys. EPA is reviewing whether there should be any reporting changes regarding the listed constituents (e.g., lead) of stainless steel, brass and bronze alloys. It is important to note that stainless steel, brass and bronze alloys, even when they contain lead, are not listed on the EPCRA section 313 list of toxic chemicals: they are not listed chemicals. Lead, of course, is included on the EPCRA section 313 list of toxic chemicals, and its presence in stainless steel, brass or bronze alloys does not change its status as a listed chemical, or as a PBT chemical.

Commenter: Non-Ferrous Founders' Society

Comment: The commenter claims that aluminum foundries in particular were arbitrarily subjected to requirements that other foundries were not. The commenter claims that "aluminum foundries do not receive the same exemption for the lead content of their alloys [as do stainless steel, brass, or bronze foundries], and thus are arbitrarily swept into having to make a plethora of estimates and calculations that other foundries need not make." This commenter contends that "there is no logical reason why aluminum foundries should have been required to include the lead content of their alloys in their threshold calculations when other foundries were not."

Response: EPA disagrees with the commenter. During the public comment period of the proposed lead rule, EPA received comments identical to those of the commenter above. In the Response-to-Comment Document of the Final TRI Lead Rule the Agency has responded to the reasons given by the commenter for his criticism of EPA in limiting the deferral of only certain lead-containing alloys (i.e., brass, bronze, and stainless steel) from the 100-pound reporting thresholds, and not extending this deferral to aluminum-containing alloys. See Attachment A for excerpts from the Response-to-Comment Document of the Final TRI Lead Rule that pertain to alloys.

Comments Pertaining to EPA's Outreach and Compliance Assistance on the New TRI Reporting Requirements for Lead and Lead Compounds

Commenter: Society of Glass and Ceramic Decorators

Comment: The commenter states that EPA's guidance regarding the recently promulgated TRI reporting requirements for lead and lead compounds (i.e., the new TRI lead rule) to reporting facilities, and especially first-time filers, was woefully inadequate.

Response: EPA understands the concerns expressed relating to the guidance provided for the reporting requirements for lead and lead compounds, however, EPA was very active with outreach and

compliance assistance efforts during the entire development and implementation of the lead rule. Specifically, EPA held public meetings, provided announcements to trade associations via e-mail, conducted numerous workshops, mailed fact sheets and announcements to facilities, developed a guidance document through public notice and comment, made presentations at conferences for trade associations including one for the Society of Glass and Ceramic Decorators, just to name a few. Because of the concerns expressed relating to this issue, EPA plans on continuing compliance assistance and outreach efforts for the lead rule.

Consideration of Lead Rule Reporting Burden

Commenter: Non-Ferrous Founders' Society

Comment: The commenter claims that "EPA's elimination of the *de minimis* exemption for lead and lead compounds now requires many first-time facilities [filers] not only to submit the Form "R" but, as a consequence, also to comply with other federal and/or state regulatory or permit requirements." This commenter asserts that EPA should have considered the costs of the additional burden associated with these requirements in its assessment of the burden imposed by the new reporting requirements for lead and lead compounds.

Response: EPA has addressed this comment on numerous occasions during previous TRI rulemakings. The most extensive discussion of this issue can be found in EPA's Response to Comments for the chemical expansion rule (59 FR 61432, November 30, 1994. See sections 7.1 and 7.5 of the "Response to Comments Received on the January 12, 1994 Proposed Rule to Expand the EPCRA Section 313 List". U.S. Environmental Protection Agency, Washington, DC, 1994, contained in docket number OPPTS-400082B.) Associated requirements were also addressed more recently in Appendix L of the Economic Analysis of the Final Rule to Modify Reporting of Persistent Bioaccumulative Toxic Chemicals Under EPCRA section 313 (October 1999). EPA believes that for analytical purposes it is appropriate to limit its assessment of costs and benefits of the rule to those directly resulting from the rule. Although regulatory requirements may be triggered by EPCRA section 313 reporting, they are not required by this or any other rule issued by EPA under EPCRA section 313. EPA has investigated these associated regulatory requirements, but has included neither the costs nor the benefits of associated requirements with the costs and benefits of the rule. Therefore, EPA does not accept the commenters' contention that EPA has not considered the costs of the additional burden associated with these requirements.

Dioxin/TEQ Reporting

Commenter: American Iron & Steel Institute (AISI)

Comment: Reporting of dioxins and furans in the dioxin and dioxin-like compounds category on a mass basis is not appropriate considering that the majority of published USEPA release estimation data

is on a total Toxic Equivalents (TEQ) basis. This reporting format is misleading to the public because the total TEQ is typically only about fifteen percent of the total mass. Furthermore, individual reporting for each member of the dioxin and dioxin-like compounds category must be completed provided that distribution information is available. This is burdensome in that it requires the reporting of seventeen separate values in addition to the total mass value on the Form R. Reporting requirements for dioxins and furans needs to be changed to a single total TEQ value immediately.

Response: EPA is developing a rulemaking that would propose to add TEQ reporting to the currently required mass quantity reporting. However, EPA cannot require TEQ reporting rather than mass reporting since, among other reasons, it would be inconsistent with the requirements of EPCRA section 313(g)(1)(C)(iv). Since TEQ are a weighted quantity not an actual mass quantity requiring only TEQ reporting would be inconsistent with EPCRA section 313(g)(1)(C)(iv) which requires that facilities report "the annual quantity of the toxic chemical entering each environmental medium." In addition, TEQ reporting will not reduce the "burden" the commenter mentions that is associated with reporting distribution data. This is because in order to calculate and report a TEQ value the facility must know the individual mass amounts (i.e., the distribution) of each member of the dioxin and dioxin-like compounds category in order to make the calculation. The only exception to this would be for TEQ only emission factors, but there are only a few of those since the vast majority of available emission factors are based on the sum of individual mass emission factors. Since the individual mass amounts must be determined, the only additional burden is transferring those values to the report.

Commenter: American Forest & Paper Association, Chlorine Chemistry Council, and the Edison Electric Institute

Comment: The commenters requested that TEQ reporting be added to the current mass reporting for the dioxin and dioxin-like compounds category. The Edison Electric Institute also requested that the TEQ reporting be automated to the greatest extent possible, for example by having the reporting software automatically calculate the toxic equivalency form reported dioxin releases.

Response: EPA is developing a rulemaking that would propose to add TEQ reporting to the currently required mass quantity reporting. EPA agrees that reporting should be automated to the greatest extent possible. In order to have the TRI reporting software calculate the TEQ, this will require that the facilities report the individual mass quantities of each member of the dioxin and dioxin-like category.

Commenter: Portland Cement Association

Comment: The commenter requested that TEQ reporting be required for the dioxin and dioxin-like compounds category rather than actual mass quantity reporting.

Response: EPA is developing a rulemaking that would propose to add TEQ reporting to the currently required mass quantity reporting. However, EPA cannot require TEQ reporting rather than mass reporting since, among other reasons, it would be inconsistent with the requirements of EPCRA section 313(g)(1)(C)(iv). Since TEQ are a weighted quantity not an actual mass quantity requiring only TEQ

reporting would be inconsistent with EPCRA section 313(g)(1)(C)(iv) which requires that facilities report "the annual quantity of the toxic chemical entering each environmental medium."

Attachment A:

Excerpts From Final Lead Rule (66 FR 4500) Response to Comments Document

NOTE: The section numbers that appear below (e.g. 6.a.ii) pertain to the specific sections where these comments and responses appear in the Response to Comments Document of the Final Rule for Lead and Lead Compounds. Commenters for the lead rule are referred to by number (e.g. C-001), and a reference table that lists the commenter numbers and names can be found at the end of this attachment.

The Response to Comments Document of the Final Rule for Lead and Lead Compounds can be found in the EPA Office of Environmental Information (OEI) docket under docket number OPPTS-400140D. The public version of the docket is located in the EPA Docket Center, Rm. B128, EPA West Building, 1301 Constitution Ave., NW, Washington, DC, 20460, and is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Docket Center is (202) 566-1752.

A. The following excerpts from the Final Rule for Lead and Lead Compounds (66 FR 4500) respond to comments received from the Non-Ferrous' Founders Society related to the elimination of the *de minimis* exemption for lead and lead compounds.

6.a.ii. Maintain de minimis exemption for lead and lead compounds

6.a.ii.2. Removal of the *de minimis* exemption will have a perverse effect on the market

Commenter list includes: C-372, C-556, C-714, C-736, C-781, and C-815

Comment: The commenters assert that the elimination of the *de minimis* thresholds for lead and lead compounds will have a perverse effect on the market. Since there is no requirement for additional analyses for lead in materials, customers will have an incentive to buy products from suppliers who have not reported any lead in their products. Similarly, suppliers will have an incentive not to tell customers whether trace amounts of lead might be present in their products. On the other hand, suppliers who responsibly analyze and report trace amounts of lead in products risk systematic elimination from future purchases by customers. Further, one commenter C-736) argues that manufacturers which have not bothered to test a given product or process for trace amounts of lead have no requirement to warn purchasers or file TRI reports, since those manufacturers that do not test products can claim no readily available information or reasonable estimate of trace metals. As a result, the proposed rule is neither fair nor reasonable. Another commenter C-556) asserts that the new requirement will penalize

suppliers that currently have analytical data indicating lead is present below the current 1%/0.1% levels. Because no new monitoring or sampling data is required, a supplier that lacks this data can simply state that lead is "not known to be present" in their product. Given the choice, simply to minimize their own internal reporting requirements, a customer is likely to select the supplier that "has no known lead" in their product over a supplier that has conducted testing and has data indicating that lead may be present. This does not mean that no lead is being used. It simply means that accurate data is not available. In fact, it is very possible that the concentration of lead in the product from the supplier that "has no known lead" could be present at levels far above that of a supplier that has been prudent in their testing and documentation. Because facilities are not required to generate new data under this rule, many facilities, rather than incur the cost of additional testing, may find it to easier to insert a disclaimer (in their MSDS or otherwise) noting that lead could potentially be present at some default level. This could result in a vast overestimate of potential releases of lead by the end user. For example, a disclaimer that a product could potentially contain a maximum of 25 parts per million lead would require the end user to assume, as best case, a median value of 12.5 ppm to calculate their releases, when in fact, there may be no lead at all present. Thus EPA's effort to provide "high quality right-to-know information to the community" could in fact result in more misinformation than fact, and actually overestimate the amount of lead released. Another commenter (C-421) asserts that facilities that have been diligent in their monitoring, and as a result have detected minute quantities of lead, will be penalized for their diligence. The commenter, as a member of the Packaging Industry, is at a particular disadvantage because Coalition of North Eastern Governors (CONEG) packaging regulations set strict limits for lead. To demonstrate compliance with CONEG requirements and to secure consumer confidence, packaging facilities must monitor lead content in their raw materials and products. As such, these facilities have large quantities of test data that will need to be reviewed and evaluated to comply with EPA's proposed requirements. This will result in substantial burden for these facilities and, at the very low lead levels found in these products, the data will be meaningless and of little to no benefit to the public

Response: EPA disagrees that removing the *de minimis* exemption for PBT chemicals will create a perverse effect on the market. These commenters are arguing that purchasers will have an incentive not to ask their suppliers and for the suppliers not to indicate if their mixtures contain small quantities of lead. However, several other commenters argue that covered facilities will be demanding this information of their suppliers. For example, some commenters (C-745; C-787; C-803) assert that facilities will send questionnaires to suppliers.

Further, EPA disagrees that there will be significant concerns regarding the accuracy of the data reported under this rulemaking with the elimination of the *de minimis* exemption. EPA believes that the information available to the typical EPCRA section 313 reporter is generally greater than it was 10 years ago. Because of this improved information availability, EPA believes that many facilities will be able to accurately estimate releases and other waste management of PBT chemicals in very small quantities. Although it may be true that some facilities will be better able to make those estimates than others, EPA does not believe this

justifies not collecting accurate information on small quantities from those facilities that can provide it. Further, facilities are required, for each release or other off-site waste management quantity reported, to indicate the principal method used to determine the amount of release reported. There are codes which allow the facility to indicate whether the estimate is based on monitoring data, mass balance calculations, published emission factors, or other approaches such as engineering calculations or best engineering judgement. By looking at the information provided through the use of these codes, users of the data can gain an understanding of the degree of accuracy or uncertainty in a particular number reported by a facility. In addition, EPA will present the releases and other waste management of PBT chemicals in context with the other toxic chemicals in the Public Data Release. Therefore, the Agency disagrees that the removal *de minimis* exemption will distort the data and make releases of PBT chemicals appear artificially high relative to other chemicals in previous years.

EPA also disagrees with those commenters alleging that EPA unfairly is penalizing facilities that have made additional efforts to obtain additional information on the composition of their products for lead and lead compounds because they will have to report and facilities that have not tested will not be required to report. Rather, it is EPCRA section 313 (g)(2) that requires that facilities use readily available information. Under the law, facilities are not required to perform any additional monitoring or analysis of production, process or use other than that already required under other environmental and health statutes. However, many covered facilities are required to comply with other environmental laws that require the facility to perform monitoring on listed toxic chemicals. For example, under the Resource Conservation and Recovery Act (RCRA), hazardous waste treatment, storage and disposal facilities are required to obtain detailed chemical and physical analysis of a representative sample of any hazardous wastes prior to any treatment storage or disposal and to develop written waste analysis plans that specify the frequency of sampling. If they do have such additional information, the law requires that the facility consider this data when complying with EPCRA section 313.

In addition, EPA disagrees that facilities will over report because the *de minimis* exemption has been eliminated for lead and lead compounds. As stated above, EPCRA section 313 (g)(2) requires that facilities use readily available information. Facilities are not required to perform any additional monitoring or analysis of production, process or use other than that already required under other environmental and health statutes. In addition, if a covered facility does not have information regarding the concentration of a toxic chemical in a mixture or trade name product, they need not consider that quantity of the chemical for threshold determinations and release and other waste management calculations. Since the beginning of the EPCRA section 313 reporting program, there have been differing levels of information underlying individual Form Rs. Both underestimates and overestimates provide misleading data to the public. EPA believes that the public should be provided with data as accurate as possible given the constraints of the statute.

Commenter list includes: C-556, C-464, D-002, and D-003 (Electrotek Corporation)

Comment: One commenter (C-556) asserts that eliminating the *de minimis* exemption is a disincentive to recycling. It is common for recycled materials to contain impurities in concentrations higher than those found in virgin materials. Facilities may choose to reduce the percentage of recycled materials currently incorporated into their products in order to minimize their reporting requirements. Therefore the disposal of these streams could actually increase, finding their way into landfills and creating the potential for even higher releases over time. One commenter argues that the net effect of the proposed lowering would actually increase rather than decrease the amount of lead in the environment as less scrap metal is being recycled and more is being sent to landfills. Other industries such as the steel industry which is now able to sell by-product furnace emissions to recyclers such as U.S. Zinc, will no longer have an outlet for that material and it will be forced to dispose of that material as well. While U.S. Zinc maintains high quality standards for not only the product but also the raw material feed, trace elements of other metals is naturally found in both. One of these elements is lead. The products contain lead levels that range from ten parts per million to one thousand parts per million or 0.1% of the finished product. The proposed limits combined with removing of the *de minimis* exemption will result in required reporting for almost every truckload of our product that is received. Even in our purest product, where lead is one-thousandth of a percent, many customers will have to prepare time-consuming reports. Some customers would actually find themselves with the raw material that is FDA-approved and safe to eat in cereal, but not EPA approved. If we look at the end-products of customers zinc oxide makes up at most five percent of end-product, that's zinc oxide itself. Lead averages less than 0.1% of this five percent; when calculated in average tire lead would be approximately one-quarter of one percent of a pound. And because zinc can be recycled again and again, many customers' end-products are also recycled at the end of their use, creating a continuous loop that prevents these chemicals from ever being landfilled. Another commenter (C-464) asserts that the elimination of the *de minimis* exemption for lead and lead's inclusion as a PBT chemical under EPCRA section 313 would not benefit anyone in industry or parties associated with recycling activities. Rather, this type of additional regulation would most likely hinder recycling activities. Exemptions are necessary to reduce the reporting burden, cost impacts and promote recycling.

Response: EPA agrees that there may be higher concentrations of lead in recycled materials than in virgin materials. However, EPA believes that facilities use recycled materials for a variety of reasons (*e.g.*, benefit to the environment, availability of the material, cost) not simply based on whether the chemicals used are reported to the TRI. Further, because recycling is much higher on the waste management hierarchy, and quantities sent for recycling as well as to landfills are included with the information reported, EPA believes that there is a strong incentive under the TRI program to recycle rather than landfill toxic chemicals. Therefore, EPA disagrees that removing the *de minimis* exemption for lead and lead compounds will have a significant impact on whether facilities choose recycled or virgin materials.

In addition, as EPA has explained, the Agency adopted the *de minimis* exemption because: 1) it believed that facilities newly covered by EPCRA section 313 would have limited access to information regarding low concentrations of toxic chemicals in mixtures that are

imported, processed, otherwise used or manufactured as impurities; 2) the Agency did not believe that the quantities from these low concentrations would significantly contribute to threshold determinations and release calculations at the facility (53 FR 4509); and 3) the exemption was consistent with information mandated by the Occupational Safety and Health Administration's (OSHA) hazard communication standard (HCS). However, as explained in more depth in the October 29, 1999, PBT chemical final rule (64 FR 58727 to 58732) and in the associated PBT chemical final rule RTC document (section 5.a.), EPA believes that: 1) covered facilities have additional sources of information available to them regarding the concentration of PBT chemicals in mixtures; as demonstrated by the information submitted by the commenters 2) the small quantities of PBT chemicals from these low concentrations would be much more likely to contribute to the lower thresholds proposed; and 3) the concentration levels chosen, in part, to be consistent with the OSHA HCS are inappropriately high for PBT chemicals. Therefore, EPA is eliminating the *de minimis* exemption for lead and lead compounds.

6.a.ii.3. Removal of the de minimis exemption will lead to data of limited value

Commenter list includes: C-815

Comment: One commenter argues that the data generated by removing the *de minimis* exemption will be suspect as it will not be representative of real lead releases. The commenter argues that some facilities will go to great lengths to quantify trace levels of lead, while others will not. As a result, an accurate representation of lead releases will not occur.

Response: Although EPA acknowledges that available data may vary from chemical to chemical and facility to facility, EPA disagrees that removing the *de minimis* exemption will lead to a wholly inaccurate representation of lead and lead compounds reporting. EPA believes that many facilities will accurately estimate releases and other waste management of PBT chemicals such as lead and lead compounds in very small quantities. Although it may be true that some facilities will be better able to make those estimates than others, EPA does not believe this justifies not collecting accurate information on small quantities from those facilities that can provide it. Further, facilities are required, for each release or other off-site waste management amount reported, to indicate the principal method used to determine the amount reported. There are codes which allow the facility to indicate whether the estimate is based on monitoring data, mass balance calculations, published emission factors, or other approaches such as engineering calculations or best engineering judgement. The statute requires that facilities use readily available data collected at the facility to meet other regulatory requirements or as part of routine plant operations. EPA does not require that additional monitoring or sampling be done in order to comply with EPCRA section 313. By looking at the information provided through the use of these codes, users of the data can gain an understanding of the degree of accuracy or uncertainty in particular numbers reported by a facility.

6.a.ii.4. Removing the *de minimis* exemption will increase burden

Commenter list includes: C-070, C-453, C-467, C-732, C-780, C-346, C-712, C-730, C-253, C- 807, C-691, C-779, C-786, C-791, C-792, C-801, C-067, C-550, C-757, C-760, C-115, C-761, C- 781, C-466, C-685, C-711, C-766, C-738, and C-104

Comment: These commenters disagree with EPA's proposal to eliminate the *de minimis* exemption for lead and lead compounds in the event they become subject to a lower threshold. They assert that in some cases, the *de minimis* exemption serves to reduce the regulatory burden where the usefulness of the data for advancing the public's right-to-know is minimal. Some commenters (C-780, C-346, C-712, C-730, C-253, C-807, C-550) argue that this is particularly true of lead that is present in trace concentrations in fossil fuels used by electric utility plants as well as lead that is used for solder, batteries, plumbing, cables and other purposes. One commenter (C-761) asserts that EPA could preserve the *de minimis* exemption for fossil fuels used at industrial facilities. They argue that this exemption would significantly reduce burdens for EPA and the regulated community and target reporting to the remaining 99.6% of lead emissions to air. One commenter (C-759) asserts that they use numerous miscellaneous products (*e.g.*, lead solder, lead borosilicate glass, adhesive kits, greases/lubricants, inks, sulfuric acid, electroplating solutions) that contain small or *de minimis* quantities of lead and lead compounds in their formulation. To estimate these amounts, they argue, where the data are not easily obtainable, would greatly increase the reporting burden on facilities currently subject to TRI. It also would trigger a reporting requirement for many small facilities that are not currently required to report because they do not burn enough fuel to meet the manufacture threshold. The significance of reports on these ancillary activities would be minimal, and the corresponding burden in calculating the amounts would far outweigh any benefit derived from the data. One commenter (C-781) argues that the primary burdens of TRI reporting are those associated with identification and evaluation of individual processes to determine whether the facility as a whole has a reporting obligation. EPCRA requires evaluation of all "readily available" data respecting such process streams, even where a facility ultimately concludes that no reporting is necessary. The proposed rule does nothing to mitigate these burdens. In fact, small but measurable quantities of lead inevitably exist in numerous - probably thousands - of raw materials and products in the chemical industry. The pervasive burden of accounting for the many minute sources of lead in process streams will far outweigh the utility of any newly-reportable information. One commenter (C-466) asserts that by eliminating the *de minimis* exemption, EPA effectively would require that sources account for every molecule of lead in determining whether the reporting threshold has been triggered. EPA's proposal would have significant impact in two scenarios: Small facilities that have low concentrations of lead in products or by- products, such as service stations or distributors of motor gasoline or aviation gasoline, may face reporting requirements under the TRI because of the 10 pound threshold. Literally tens of thousands of facilities may be required to report insignificant emissions of lead. Large facilities that must account for infinitesimally small lead quantities in large volume production. These would include aluminum facilities that process large volumes of aluminum alloys or aluminum scrap. Since no *de minimis* threshold applies,

even lead levels of alloys in the part per billion concentration range may add up to the 10-pound threshold. The additional reporting burdens and costs associated with the rule, therefore, would result in little if any commensurate environmental benefit. One commenter (C-685) argues that the proposal to eliminate the *de minimis* exemption for lead and lead compounds will result in an enormous regulatory burden for industry of all sizes, especially small businesses, and is clearly at odds with Executive Order 12866 (58 Fed. Reg. 51,735 (Oct. 4, 1993)). Businesses will be forced to perform numerous calculations to determine that the facility released an environmentally insignificant amount of lead. Other commenters (C-711, C-766) assert that the following example illustrates how the elimination of the *de minimis* exemption for lead will result in a dramatic increase in the iron and steel industry's burden (*e.g.*, paperwork demands, additional effort to determine and/or estimate small amounts of lead processed and/or otherwise used and released) to complete the TRI with only a tiny increase in reported pounds of lead released. They assert that *de minimis* amounts of lead are present in steel strip processed at integrated iron and steelmaking facilities. An even smaller amount of lead is released to the environment as a result of processing the steel strip (*e.g.*, slitting, welding). Given the large number of operations associated with steel strip processing (*e.g.*, cold rolling, annealing, galvanizing, pickling, electroplating), integrated iron and steelmaking facilities estimate that the elimination of the *de minimis* exemption will require facilities to spend as much time estimating very small lead release levels from finishing operations (probably one to two pounds per facility) as is currently spent in estimating lead release levels resulting from the primary iron and steelmaking operations (typically tens of thousands of pounds per facility). An estimated 0.004% increase in lead release reporting does not justify a 100-fold increase in the time needed to complete a facility's TRI for lead and lead compounds. One commenter (C-731) asserts that the specific gravity of lead impurities in pigments also means that the lead will not be able to be airborne for long distances. Lead particles will settle out within a few feet of the vessel to which it is added, unless the vessel is connected directly to a pollution control device. Otherwise, air velocities in the building will not be high enough to entrain the lead particle to carry it into the environment beyond the workplace. By eliminating the *de minimis* limitation, an unreasonable burden is placed on the manufacturer of the coating to track insignificant amounts of lead. As an example, a particular line of an industrial primer that has zinc as its main component has a small amount of lead as a contaminant. If the *de minimis* limitation were removed, that manufacturer would be required to track 0.0066 pounds of lead per gallon (0.8 grams of lead per liter). This would be equivalent to 0.00043 ounces (0.012 grams) of lead per square foot, as applied). The cost and effort required to track such a minuscule quantity of lead does not justify the benefit, if any, that would derive from having that information. Another commenter (C-104) argues that a scientifically sound *de minimis* exemption is required to assure the validity, cost effectiveness and credibility of the TRI Form R reports. The commenter urges the Agency to continue the *de minimis* exemption for lead and all TRI compounds to properly balance the large reporting effort involved against the negligible value to the LEPC emergency response planning effort.

Response: As in comments that EPA received on the January 5, 1999, PBT chemical proposed rule (64 FR 688) the commenters have incorrectly characterized the burden and

inappropriately dismissed the benefit associated with this rulemaking. EPA provided detailed responses to these same general comments in the October 29, 1999, PBT chemical final rule (64 FR 58727 to 58732) and in the associated PBT chemical final rule RTC document (section 5.a.). Notwithstanding the publication of the PBT chemical final rule forty-eight days before the close of the comment period on this proposed rule, the commenters have provided no new information that convinces EPA to reconsider its previous resolution of these issues and to maintain the *de minimis* exemption for lead and lead compounds.

Commenter list includes: C-733

Comment: The commenter asserts that lowering or abolishing the *de minimis* exemption for lead and lead compounds places an unreasonable burden on industries. There is already no *de minimis* exemption for incidentally manufactured materials, such as combustion emissions. In fact, EPA already expects to find lead emissions associated with combustion of coal and petroleum products. Emissions factors can be developed for general use in calculating lead emissions from fuel use. However, industry will bear increased analytical costs and recordkeeping for finding and verifying trace amounts of lead and lead compounds in other materials, potentially with little gain in information on amounts of lead and lead compound releases. Further investigation of other *de minimis* lead and lead compound uses could be done at lower cost, and potentially greater accuracy, by means other than the Toxic Release Inventory reporting.

Response: As in comments that EPA received on the January 5, 1999, PBT chemical proposed rule (64 FR 688), the commenters have incorrectly characterized this proposal. Under this rule, EPA is not changing the supplier notification requirements nor instituting any requirements to perform additional testing or monitoring under EPCRA section 313. EPA provided detailed responses to these same general comments in the October 29, 1999, PBT chemical final rule (64 FR 58727 to 58732) and in the associated PBT chemical final rule RTC document (section 5.a.). Further, although the commenter asserts that investigation of other *de minimis* lead and lead compound uses could be done at lower cost, and potentially greater accuracy, by means other than the Toxic Release Inventory reporting they provide no alternative mechanisms to support their assertion . Notwithstanding the publication of the PBT chemical final rule forty-eight days before the close of the comment period on this proposed rule, the commenters have provided no new information that convinces EPA to reconsider its previous resolution of these issues and to maintain the *de minimis* exemption for lead and lead compounds.

Commenter list includes: C-095 and C-103

Comment: The commenters assert that the *de minimis* exemption was created in the first place due in part to the burden required to obtain information present in a smaller amount than is available on MSDS sheets. They argue that it is impossible to estimate the total increased reporting burden from eliminating the *de minimis* exemption because information is not

currently readily available to indicate which of the thousands of materials used would contain lead or lead compounds below *de minimis* levels. They insist that in most cases the best information available to manufacturers is what is provided on MSDS and that chemical components are generally not included on the MSDS if they are present in quantities less than 1% of mixtures or 0.1% for OSHA carcinogens. While it appears likely most materials would not contain detectable lead or lead compounds, there would be no way of knowing for certain without requiring each material manufacturer to provide this information. Therefore, the commenters request that the Agency retain the *de minimis* exemption for lead and lead compounds. They also argue that traces of lead could remain in waste streams from processes previously using lead-containing materials, such as e-coat operations long after the facility has changed to lead-free products. One commenter (C-103) argues that companies making an effort to calculate their releases based on the contents of raw materials and other factors will be frustrated by attempts to discern minute quantities, often resulting in inaccurate estimates and reported releases and that this is precisely why the *de minimis* exemption was devised.

Response: As in comments that EPA received on the January 5, 1999, PBT chemical proposed rule (64 FR 688) the commenters have misrepresented the original basis for the *de minimis* exemption. EPA provided detailed responses to these same general comments in the October 29, 1999, PBT chemical final rule (64 FR 58727 to 58732) and in the associated PBT chemical final rule RTC document (section 5.a.). Notwithstanding the publication of the PBT chemical final rule forty-eight days before the close of the comment period on this proposed rule, the commenters have provided no new information that convinces EPA to reconsider its previous response to these issues and to maintain the *de minimis* exemption for lead and lead compounds.

In addition, the commenter asserts that traces of lead could remain in waste streams from processes previously using lead-containing materials, such as e-coat operations, long after the facility has changed to lead-free products. The commenter seems to misunderstand how covered facilities determine chemical activity thresholds under EPCRA section 313 and the application of the *de minimis* exemption. If a covered facility manufactures, processes or otherwise uses a toxic chemical above thresholds they must report all non-exempted releases and other waste management activities associated with the toxic chemical. Therefore, if the facility has ceased using lead-contained materials, they are unlikely to trigger a chemical activity threshold for lead. Further, the applicability of the exemption is based on the concentration of the toxic chemical during the threshold activities, not during the release and other waste management activities. Only those waste streams associated with process streams that meet the conditions of the exemption may be eligible for the *de minimis* exemption. Therefore, if the facility stopped using lead in its e-coating operations but does exceed a chemical activity threshold for lead elsewhere at the facility, the residual lead in the e-coat waste streams would not be eligible for the *de minimis* exemption even if it were retained for PBT chemicals.

Commenter list includes: C-787

Comment: The commenters assert that the elimination of the *de minimis* rule aggravates the burdens imposed by the rule, expanding its coverage to a vastly broader number of parties that will largely be unaware that this new obligation even applies to them.

Response: As with comments that EPA received on the January 5, 1999, PBT chemical proposed rule (64 FR 688), EPA disagrees that the elimination of the *de minimis* exemption will significantly increase the burdens imposed by the rule. EPA provided detailed responses to these same general comments in the October 29, 1999, PBT chemical final rule (64 FR 58727 to 58732) and in the associated PBT chemical final rule RTC document (section 5.a.). Notwithstanding the publication of the PBT chemical final rule forty-eight days before the close of the comment period on this proposed rule, the commenters have provided no new information that convinces EPA to reconsider its resolution of these general issues for lead and lead compounds.

In addition, EPA disagrees that there will be a large contingency of covered facilities that will be unaware that this new obligation applies to them. As with past rulemaking efforts, EPA performs extensive outreach to ensure that facilities are aware of new regulations. In addition to updating the EPCRA section 313 reporting package and our Internet website, EPA presents any new regulations in annual EPCRA section 313 training workshops provided across the country. Further, as with the PBT chemical rulemaking, EPA will distribute mailings to all covered facilities and will perform targeted outreach guided in part by the industries identified by the economic analysis as potentially covered by this rulemaking.

Commenter list includes: C-115

Comment: The commenter asserts that to fully understand the potential impact on manufacturing facilities created by the elimination of the *de minimis* exemption, one must attempt to quantify the number of affected facilities and identify the additional burdens placed upon them. At some of the commenter's facilities this could mean significant tracking of large volumes of materials containing minute amounts of lead. The proposed rule states:

> EPA notes that the increase in the burden resulting from eliminating the *de minimis* exemption for lead and lead compounds would be limited to facilities that import, process, otherwise use or manufacture as impurities lead and lead compounds.

They assert that this statement gives the impression that only a small number of manufacturing facilities would be impacted by this proposed rule. However, lead and lead compounds exist in trace amounts or as impurities in a vast number of substances used in most manufacturing processes. The commenter cites well water, drinking water, coal, batteries, electrical components, incandescent lights, steel, aluminum, and a variety of other metals that may contain lead as an impurity. Although this list is not all inclusive, they assert that one can begin to understand that a large number of manufacturing facilities will have to start tracking the use of many substances currently exempt.

Response: The citation quoted by the commenter has been taken out of context and misinterpreted. Lead and lead compounds that are manufactured as by products as well as chemicals that are processed or otherwise used above the *de minimis* concentration, have never been eligible for the *de minimis* exemption. In the sentence cited by the commenter, EPA was simply explaining that not all chemical activities will be affected by eliminating the *de minimis* exemption. Further, for lead and lead compounds in mixtures that are imported, processed, or otherwise used, the increase in burden resulting from the elimination of the *de minimis* exemption would be limited because EPCRA does not require additional monitoring or sampling in order to comply with the reporting requirements under EPCRA Section 313.

Further, as in comments that EPA received on the January 5, 1999, PBT chemical proposed rule (64 FR 688) the commenters have incorrectly characterized the burden associated with this rulemaking. EPA provided detailed responses to these same general comments in the October 29, 1999, PBT chemical final rule (64 FR 58727 to 58732) and in the associated PBT chemical final rule RTC document (section 5.a.). Notwithstanding the publication of the PBT chemical final rule forty-eight days before the close of the comment period on this proposed rule, the commenters have provided no new information that convinces EPA to reevaluate the issues resolved in the PBT chemical final rule for lead and lead compounds.

Commenter list includes: C-757

Comment: The commenter asserts that if the *de minimis* exemption is removed, all spills or leaks then would be counted toward the facility threshold determination, imposing a tremendous burden on automotive and truck maintenance facilities.

Response: The commenter seems to misunderstand the mechanics of the *de minimis* exemption. Facilities are required to consider quantities of toxic chemicals that are manufactured, processed, or otherwise used toward the ten pound threshold for lead and lead compounds. Spills and leaks are not usually considered toward these thresholds and therefore, have never been specifically covered by the *de minimis* exemption. Rather, if a facility processes, otherwise uses or imports a mixture or trade name product that contains a toxic chemical below the *de minimis* level, or manufactures toxic chemicals as impurities in a mixture or trade name product below the *de minimis* level, releases and other waste management from these activities are exempt from reporting. Therefore, although the facility will not likely be required to consider the quantities in spills or leaks towards their activity thresholds, releases and other waste management from activities that may previously have been exempt will now require reporting. However, because automotive and truck maintenance facilities are currently covered by SIC code major group 55, they would not meet the SIC code criterion for reporting under EPCRA section 313 and therefore the *de minimis* exemption is irrelevant.

Commenter list includes: C-464

Comment: The commenter asserts that if there are no *de minimis* exemptions, the reporting burden for all users of products containing lead will be enormous. The current *de minimis* exemption, which is based upon the OSHA MSDS notifications are satisfactory in identifying hazards. Without exemptions, the agency will be heavily burdened with additional information from small businesses and large business alike.

Response: The commenter misunderstands the purpose of EPCRA section 313. As explained elsewhere, the central purpose of EPCRA section 313 is to gather and disseminate to the public relevant information on the releases and other waste management activities of toxic chemicals. This information is used for a variety of purposes including by citizens across the nation in making determinations regarding where to live. This information is also used by various government agencies to identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment. For lead and lead compounds, releases and other waste management activities even in relatively small amounts are of concern. By eliminating the *de minimis* exemption for these chemicals, EPA will provide communities across the nation with access to data that may help them in making this determination.

Further, the commenter asserts that this rulemaking will likely hinder recycling activities but does not provide any information indicating why removing the *de minimis* exemption would hinder recycling activities specifically. They argue that exemptions, seemingly in general, are necessary to reduce the reporting burden and promote recycling but give no reason as to why the *de minimis* exemption, specifically, should be retained for these chemicals. The Agency adopted the *de minimis* exemption because: 1) it believed that facilities newly covered by EPCRA section 313 would have limited access to information regarding low concentrations of toxic chemicals in mixtures that are imported, processed, otherwise used or manufactured as impurities; 2) the Agency did not believe that the quantities from these low concentrations would significantly contribute to threshold determinations and release calculations at the facility (53 FR 4509); and 3) the exemption was consistent with information mandated by the Occupational Safety and Health Administration's (OSHA) hazard communication standard (HCS). However, as explained in more depth in the October 29, 1999, PBT chemical final rule (64 FR 58727 to 58732) and in the associated PBT chemical final rule RTC document (section 5.a.), EPA believes that: 1) covered facilities have additional sources of information available to them regarding the concentration of PBT chemicals in mixtures; 2) the small quantities of PBT chemicals from these low concentrations would be much more likely to contribute to the lower thresholds proposed; and 3) the concentration levels chosen, in part, to be consistent with the OSHA HCS are inappropriately high for PBT chemicals. Therefore, EPA believes that the factual bases for the *de minimis* exemption on which the Agency previously relied do not apply to PBT chemicals and as PBT chemicals, EPA is eliminating the exemption for lead and lead compounds.

6.a.ii.5. Removing the *de minimis* exemption will add confusion for covered facilities

Commenter list includes: C-792 and C-108

Comment: The commenters assert that removing the *de minimis* exemption for just lead and lead compounds will significantly increase the confusion associated with the already complex TRI reporting process. Applying the *de minimis* to some substances and not to others needlessly increases the complexity of TRI determinations and will probably lead to inadvertent errors in reporting. They argue that these increased errors will, in turn, increase the amount of time that both the EPA and the reporting facility will need to expend to correct the errors. They further assert that if the data gained from these determinations was of some particular significance, these additional efforts could be justified - but simply removing the *de minimis* exemption to capture lead and lead compounds in solder, batteries, etc., provides the public with very little useful right-to-know information.

Response: EPA disagrees that removing the *de minimis* exemption for lead and lead compounds will significantly increase confusion on reporting under EPCRA section 313. The commenter seems to imply that the Agency is singling out lead for the removal of the *de minimis* exemption. However, no chemicals classified as PBT chemicals under EPCRA section 313 are eligible for the *de minimis* exemption. Therefore, covered facilities must consider the entire class of PBT chemicals similarly for reporting purposes under EPCRA section 313. Further, on at least one level, the removal of the *de minimis* exemption simplifies the reporting requirements for these toxic chemicals because facilities need not compare the concentration of lead or lead compounds in a mixture or other trade name product with the *de minimis* concentration levels. For example, if a facility has five sources of lead at their facility, and knows the concentrations of the chemical in the source, they do not need to then consider which sources contain the chemical below the *de minimis* concentration or to continue to evaluate the mixture in the process stream to ensure that it does not exceed the *de minimis* level. Rather, all quantities are considered together to see if the facility exceeds the threshold. In addition, as explained elsewhere in these comment responses, EPA believes that the data gained from the removal of the *de minimis* exemption is certainly of significance for lead and lead compounds. The availability of information on lead and lead compounds is a critical component of a community's right-to-know. Existing data leads EPA to believe that, as a general matter, releases of toxic chemicals that persist and bioaccumulate are of greater potential concern than the release of toxic chemicals that do not persist or bioaccumulate. Since PBT chemicals can remain in the environment for a significant amount of time and can bioaccumulate in animal tissues, even relatively small releases of such chemicals from individual facilities have the potential to accumulate over time to higher levels and to cause significant adverse impacts on human health and the environment. Therefore, it is particularly important to gather and disseminate to the public relevant information on the releases and other waste management activities of lead and lead compounds. Thus, for these chemicals, releases and other waste management activities even in relatively small amounts are of concern. By eliminating the *de minimis* exemption for lead and lead compounds, EPA will provide communities across the nation with access to data that may help them in making this determination. EPA also expects this information to be used by various government agencies to

identify potential problems, set priorities, and take appropriate steps to reduce any potential risks to human health and the environment.

6.a.ii.6. Removing the *de minimis* exemption will increase burden while proving very limited benefit

Commenter list includes: C-103, C-800, and C-470

Comment: The commenter asserts that the removal of the *de minimis* exemption from the proposed reporting requirements will greatly increase the reporting burden resulting in many zero-release reports without an associated benefit to the public. One commenter (C-800) argues that without the *de minimis* exemption, many companies will be responsible for reporting based upon throughput of materials and with the minute levels of lead in cement and aggregates, producers would be left to make a "best guess" as to how much lead was used in the product over time. This fact will result in a significant increase of zero-release reports. They argue that the removal of the *de minimis* exemption will only cause unnecessary reporting, public confusion and no real reduction in releases.

Response: As in comments that EPA received on the January 5, 1999, PBT chemical proposed rule (64 FR 688), the commenters have misrepresented information inherent in reports indicating that zero pounds of lead and lead compounds have been managed as waste. EPA provided detailed responses to these same general comments in the October 29, 1999, PBT chemical final rule (64 FR 58727 to 58732) and in the associated PBT chemical final rule RTC document (section 5.a.). Notwithstanding the publication of the PBT chemical final rule forty-eight days before the close of the comment period on this proposed rule, the commenters have provided no new information that convinces EPA to reconsider its previous resolution of these issues and to maintain the *de minimis* exemption for lead and lead compounds.

Commenter list includes: C-768

Comment: The commenter is concerned about the additional burden that the elimination of the *de minimis* exemption would have on industry. This would result in a tremendous number of reports (and burden) for a small amount of releases. For example, petroleum bulk terminals would not report releases of lead under the current 25,000 pound processing threshold (with the *de minimis* exemption), but would have to report at a threshold of 10 pounds if the *de minimis* exemption is eliminated. The amount of lead in crude oil and various products are not well-known or established. For complex variable composition mixtures, such as those processed in the petroleum industry, attempting to identify and quantify quantities below *de minimis* levels would be impractical and extremely burdensome, and would not produce meaningful data for public use. The amount of lead found in such mixtures fluctuates over time due to variations in the naturally occurring crude oil feedstocks. For many facilities, the analysis will result in the conclusion that adequate data are not available to make reasonable estimates

for lead that are present at *de minimis* levels. In their comments on the January 5 rule, the Small Business Association noted that petroleum terminals and bulk storage facilities are not likely to release any significant amount of PBT chemicals (*e.g.*, lead and lead compounds) to the environment through the processes that they typically engage in on a daily basis because all materials remain contained. EPA's Table 3 in the proposed rule illustrates the low levels of expected releases that would be reported from the petroleum bulk stations and terminals industry (64 FR 42239) with the removal of the *de minimis* exemption. EPA estimates an additional 980 reports would be filed under the 10 pound reporting threshold. At the 1 pound reporting threshold reports would almost triple to 2,459. Even assuming that all of the reports between the 10 and 1 pound thresholds report releases close to 10 pounds, only 14,790 pounds of lead would be reported at the lower threshold. These releases are extremely small when compared to all expected reported lead releases (hundreds of millions of pounds annually).

Response: As in comments that EPA received on the January 5, 1999, PBT chemical proposed rule (64 FR 688), the commenters have incorrectly characterized the burden and inappropriately dismissed the benefit associated with this rulemaking. EPA provided detailed responses to these same general comments in the October 29, 1999, PBT chemical final rule (64 FR 58727 to 58732) and in the associated PBT chemical final rule RTC document (section 5.a.). Notwithstanding the publication of the PBT chemical final rule forty-eight days before the close of the comment period on this proposed rule, the commenters have provided no new information that convinces EPA to reconsider its previous resolution of these issues and to maintain the *de minimis* exemption for lead and lead compounds.

B. The following excerpts from the Response-to-Comment Document of the Final Rule for Lead and Lead Compounds (66 FR 4500) respond to the Society of Glass and Ceramic Decorators and Non-Ferrous Founders' Society comments regarding EPA's exclusion of the Form A Certification Statement option for TRI reporting of lead and lead compounds.

6.b. Changes to the use of the alternate threshold and Form A

6.b.i. Exclude Lead and Lead Compounds from Using the Form A

Commenter list includes: C-234

Comment: One commenter agrees that the purpose of lowering TRI reporting thresholds for PBT chemicals, such as lead and lead compounds, is to collect more specific data rather than less. They assert that it might be possible to create reporting ranges or a modified Form A specifically for these substances that would provide a higher level of information, but it would then be questionable if any burden reduction would be achieved. Therefore, they argue, it makes sense to eliminate Form A reporting.

Response: EPA agrees with the comment that using Form A, or creating reporting ranges under the alternate threshold certification for PBT chemicals would not collect data that would allow users to perform meaningful analyses. As stated in the proposal, even small quantities of persistent bioaccumulative chemicals may cause elevated concentrations in the environment and organisms that may cause significant adverse effects. Given the persistent and bioaccumulative nature of these chemicals and the need for communities to have information about these PBT chemicals, EPA believes it would be inappropriate to allow an option that would exclude information on some releases and other waste management of these chemicals. Although it is unclear how much burden reduction would result from revising the Form A or creating meaningful reporting to include ranges, EPA agrees with the commenters that the Agency should exclude all PBT chemicals from the alternate threshold of 1 million pounds and that no new alternate threshold for PBT chemicals should be established at this time.

Commenter list includes: D-005
Comment: One commenter argues that, as discussed among the members of the NACEPT toxic data reporting committee, currently the Form A is extremely underutilized and they believe that it does not make sense to change the eligibility when the effects of using it are unknown.

Response: EPA agrees that not all facilities that are eligible to use the Form A are currently using it. Further, the Agency believes that it is appropriate to collect and analyze several years worth of data at the lowered thresholds before EPA considers developing a new threshold and reportable amount appropriate for PBT chemicals. As stated in the final PBT rule, even small quantities of persistent bioaccumulative chemicals may cause elevated concentrations in the environment and organisms that may cause significant adverse effects. Given the persistent and bioaccumulative nature of these chemicals and the need for communities to have information about these PBT chemicals, EPA believes it would be inappropriate to allow an option that would exclude information on some releases and other waste management of these chemicals. EPA agrees with the commenter that the Agency should exclude all PBT chemicals from the alternate threshold of 1 million pounds and that no new alternate threshold for PBT chemicals should be established at this time.

Commenter list includes: C-812 (As submitted under D-005)

Comment: One commenter asserts that Form A is not an option for their member companies. They assert that because the majority of their members recycle circuit boards in quantities greater than the amount that's allowed under Form A, it is not a potential burden reduction measure for the electronic interconnection industry.

Response: EPA agrees that not all facilities are eligible to use the Form A certification at the current thresholds and that for these facilities, allowing the use of Form A for PBT chemicals such as lead and lead compounds may not affect the burden of complying with EPCRA section 313. As EPA has explained in previous responses to comment, even small quantities of persistent bioaccumulative chemicals may cause elevated concentrations in the environment and

organisms that may cause significant adverse effects. Given the persistent and bioaccumulative nature of these chemicals and the need for communities to have information about these PBT chemicals, EPA believes it would be inappropriate to allow an option that would exclude information on some releases and other waste management of these chemicals. Therefore the Agency is excluding all PBT chemicals from the alternate threshold of 1 million pounds at this time.

6.b.ii. Develop a Modified Form A for Lead and Lead Compounds

Commenter list includes: C-423, C-757, C-083, C-105, C-375, C-385, C-709

Comment: Some commenters assert that although the current thresholds for the Form A may be inappropriate for PBT chemicals, there should be some alternate standard for PBT reporting on the Form A. One commenter (C-423) asserts that by proposing to eliminate the use of the Form A, the purpose of burden reduction will be lost. This commenter agrees that for PBT chemicals, 500 pounds of production-related waste may be too high, but only if greater than 1% of the waste is being released without capture. They argue that if the waste is being managed under RCRA, CWA and CAA regulations, then the 500 pounds of production related waste should not have an impact on the environment or human health. The commenter suggests that EPA maintain the Form A but add a caveat for such releases to the local environment above a specified amount. Other commenters (C-083, C-105) argue that a better approach than eliminating the Form A would be to modify the trigger values of 1 million pounds / 500 pounds to lower values consistent with reduction of the reporting threshold. One commenter (C-709) suggests that rather than 1 million pounds EPA should consider establishing an alternate reporting threshold for these chemicals at 100 or 1000 pounds.

Response: As with comments that EPA received on the January 5, 1999, PBT chemical proposed rule (64 FR 688), EPA disagrees with the comments suggesting that the suggested alternate threshold approaches for Form A be established for PBT chemicals, including lead and lead compounds. Creating a Form A option that fails to provide significant information on some releases and other waste management of PBT chemicals including lead and lead compounds would be inconsistent with expanded reporting on lead and lead compounds. See EPA's responses to similar general comments in the October 29, 1999, PBT chemical final rule and in the associated PBT chemical final rule RTC document (section 5.b.i.).

Commenter list includes: C-757

Comment: One commenter asserts that they do not agree with EPA that releases associated with remedial actions are functionally equivalent to the catastrophic-type releases. They argue that so long as remediation activities are conducted in accordance with the RCRA Corrective Action Program, "releases" of lead and lead compounds should not be considered "uncontrolled," and should not adversely affect the availability of the alternative threshold or the

use of the Form A if the facility is otherwise qualified. The commenter asserts that if EPA were to eliminate the alternative threshold or consider remediation wastes as "uncontrolled," this would serve only to discourage facility owners and operators from conducting environmentally beneficial remedial actions.

Response: The commenter misunderstands EPA's discussion of the Form A applicability. EPA is not addressing whether remediation wastes are controlled or uncontrolled. Nor is the Agency equating remediation wastes to releases from catastrophic events. Rather, in the preamble to the proposed rule, EPA explains that Form A applicability does not take into consideration all releases and other waste management that may occur at a covered facility. The Agency further explains that catastrophic releases and remedial activities specifically are not considered in the Form A determination. These two types of quantities are collected together under section 6607(b)(7) of the PPA as releases that are not associated with production. In the same proposal discussion, the Agency further states that:

> Given that even small quantities of lead or lead compounds may result in elevated concentrations in the environment or in an organism, that reasonably can be anticipated to result in significant adverse effects, EPA believes it would be inappropriate to allow an option that would exclude information on some releases. (64 FR 42235)

Therefore, in this preamble discussion, EPA is simply expressing the concern that a covered facility may have large catastrophic releases of a PBT chemical such as lead but if the Form A were maintained for PBT chemicals, and the facility did not exceed the alternate threshold, the public would not be made aware of the catastrophic release through the TRI program. Given the persistent and bioaccumulative nature of these chemicals and the need for communities to have information about these PBT chemicals, EPA believes it would be inappropriate to allow an option that would exclude information on some releases and other waste management of these chemicals. Therefore, EPA is eliminating the alternate threshold certification for the PBT chemicals lead and lead compounds.

Commenter list includes: C-375 and C-385

Comment: Some commenters argue that EPA could retain use of the Form A, as well as lower the reporting threshold for lead by simply modifying the Form and/or including specific instructions in the Toxic Chemical Release Inventory Reporting Forms and Instructions. They assert that the instructions could simply direct industry to list on the Form A lead compounds if over 10 pounds use, as long as emissions were less than *de minimis* levels. They suggest that higher levels of use, such as over 100 pounds, or higher emissions, such as over 10 pounds, would require reporting on a Form R. One commenter (C-375) also asserts that each year their facility reports manufacturing use of manganese, zinc and copper compounds on Form A's. Each year, EPA or the respective states, send back confirmation sheets on the data. Each of these government generated sheets reports zero emissions of these compounds. The commenter believes that this would be the same as if lead is reported on the Form R as "0" and

questions why two different forms be used to report the same result.

Response: As with comments that EPA received on the January 5, 1999, PBT chemical proposed rule (64 FR 688), EPA disagrees with the comments suggesting that a new alternate threshold for Form A be established for PBT chemicals, including lead and lead compounds at this time. EPA provided detailed responses to these same general comments in the October 29, 1999, PBT chemical final rule and in the associated PBT chemical final rule RTC document (section 5.b.i.).

In addition, it is unclear but it appears that the commenter is asserting that both the Form A and the Form R would indicate zero releases of lead. EPA disagrees. Release and other waste quantities are only reported on the Form R. The Form A includes facility specific information, the chemical name and CAS number or trade secret designation. It does not include any quantities of the toxic chemical. Further, when the Agency performs data quality checks on the Form A in the form of confirmation letters to EPCRA section 313 covered facilities, no indication of quantities of the toxic chemical is included. In fact, under the current thresholds, facilities may use a Form A even if they have up to 500 pounds of production related waste. Therefore, users of the data might conservatively estimate that the facility had 500 pounds of releases and other waste management or more given that quantities of the toxic chemical released due to remedial actions, catastrophic events and other one-time events not associated with production are not included in the Form A threshold determination. The Form R, however, does give the quantity of the toxic chemical released or otherwise managed as waste. This is the only TRI form that would indicate to users of the data that a facility had zero releases of the toxic chemical.

Further, EPA disagrees that the Agency could simply edit the instructions to the Forms to change the applicability of the Form A to PBT chemicals. The applicability criteria for the Form A are found in the regulations at 40 CFR § 372.27. To change the applicability of the Form A for PBT chemicals such as lead and lead compounds, EPA would need to alter these and/or other relevant regulations through rulemaking. As EPA has explained in more detail in the proposed rule and other responses to comment, EPA does not believe it would be appropriate at this time to grant such an exemption or provide a new alternate Form A threshold. The Agency believes that it is appropriate to collect and analyze several years worth of data at the lowered thresholds before EPA considers developing a new alternate threshold and reportable quantity appropriate for PBT chemicals.

Commenter list includes: C-704 and C-724

Comment: Some commenters assert that EPA annually receives "TRI data on the release and other waste management of over a billion pounds of lead and lead compounds" [64 FR 42236] and therefore, it seems unreasonable to lower the Form A limits in an attempt to identify facilities that are manufacturing, processing or using less than one thousandth of the quantity of lead and lead compounds already reported.

Response: The commenters seem to misunderstand EPA's proposal. EPA has not proposed to lower the Form A limits. Rather, EPA has proposed to eliminate the use of the Form A for PBT chemicals such as lead and lead compounds. Further, the commenters assert that facilities that meet the Form A thresholds, including less than 500 pounds of lead in production related waste, should be able to continue to use Form A because so many more pounds of lead are already being reported to the TRI database. EPA disagrees. The TRI database is not designed to simply capture some releases at a national level. Rather, as Congress stated in EPCRA section 313(h):

> The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available... to inform persons about releases of toxic chemicals to the environment; to assist government agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.

As Congress indicated, some users of the data may track chemicals in waste for a specific community. There may be communities in which all or many of the EPCRA section 313 covered facilities release or otherwise manage lead in waste below 500 pounds. As EPA has explained in more detail in the final PBT rule and responses to comment, even small quantities of lead or lead compounds may result in elevated concentrations in the environment or in an organism, that reasonably can be anticipated to result in significant adverse effects. In these communities significant amounts of lead, as a total from the various facilities that have less than 500 pounds of production related waste, may be released but this information is not available to the public in part due to the availability of the Form A. (*See* October 29, 1999, PBT chemical final rule and in the associated PBT chemical final rule RTC document)

6.b.iii. Maintain the Current Form A for Lead and Lead Compounds

Commenter list includes: C-346, C-757, C-812, C-815, D-003, and D-005

Comment: Several commenters oppose the elimination of Form A for PBT chemicals such as lead and lead compounds. One commenter(C-757) contends that the burden-reducing purpose underlying the Form A remains a valid and important component of the TRI regulatory scheme. Another commenter (C-812) asserts that although few of their members are eligible for the Form A they oppose the elimination of any burden reduction measures. Another commenter (D-003) argues that excluding the Form A option increases the regulatory burden on facilities. They contend that the facility may know that it exceeds the ten pound threshold but may not be able to document and estimate properly and quantitate properly a tenth of a pound release.

Response: EPA agrees that the Agency adopted the alternate threshold certification as a means of reducing the burden associated with EPCRA section 313. However, as EPA explained in the final PBT rule, EPA believes that use of the existing alternate threshold and reportable quantity for Form A would be inconsistent with the intent of expanded reporting for PBT chemicals. As explained in the final rule this includes

In response to comments on the burdens imposed by EPA's proposal to remove the Form A option for lead and lead compounds, see section 8 and see the final PBT rule discussing these issues generally.

Further, EPA disagrees with the assertion that covered facilities are required to quantitate a tenth of a pound. As explained in the PBT chemical final rule:

> EPA is providing the following guidance on the level of precision covered facilities should use to report their releases and other waste management quantities of PBT chemicals. Facilities should continue to report releases and other waste management amounts greater than 1/10 of a pound (except dioxin), at a level of precision supported by the accuracy of the underlying data and the estimation techniques on which the estimate is based. (64 FR 58734)

Therefore facilities are not required to report to a 1/10 of a pound, but rather, to the level of precision supported by the accuracy of the underlying data.

Commenter list includes: C-375 and C-385

Comment: Some commenters assert that the Form A provides a significant reduction in the TRI reporting burden for the feed manufacturing industry and they therefore oppose the elimination of Form A for PBT chemicals such as lead and lead compounds. One commenter (C-375) contends that prior to the addition of the Form A, zinc oxide, manganese oxide, manganese sulfate, copper oxide and copper sulfate, required reporting through a Form R. At this commenter's facility, the estimated reporting reduction through use of the Form A was valued at $50,000 per year. They argue that if this proposal is adopted, these same compounds that were exempted from full reporting will once again be indirectly brought back into the tracking and reporting system because lead is found as an impurity in these raw materials. They assert that all of this commenter's facilities with 10 or more employees will be required to report using the Form R. Another commenter (C-385) asserts that over 92% of all facilities in the feed industry that previously filed Form R's now file, or are qualified to file, Form A's. According to EPA's own estimates, they assert, the creation of the Form A has saved the feed industry over $2 million annually in reporting costs.

Response: EPA agrees that under this rule, facilities that previously may have been able to use the Form A for PBT chemicals such as lead and lead compounds will no longer have that option. The Form A permits facilities that meet alternate criteria (*i.e.*, they manufacture,

process or otherwise use more than one million pounds and have less than 500 pounds of production related waste associated with the toxic chemical) to file the Form A certification statement in lieu of the Form R. However, lead and lead compounds contained as impurities in these materials were never removed from the "tracking and reporting system" under the Form A. Even when eligible for the Form A, lead and lead compounds still needed to be tracked to ensure that the one million and 500 pound criteria were met. Further, if these chemicals did qualify for the Form A, assuming that no actual exemptions applied, the certification still needed to be filed.

In addition, EPA has considered the burden associated with removing the Form A for PBT chemicals such as lead and lead compounds. See section 8 of this RTC document for a discussion of comments pertaining tho the burdens associated with this rule.

Commenter list includes: C-690

Comment: One commenter argues that the loss of a facility's ability to use a Form A certification statement will have a serious impact on covered facilities. They quote EPA as stating that it "adopted the alternate threshold and the Form A as a means of reducing the burden associated with EPCRA section 313." Now, they assert, it is EPA's position that this alternate threshold and reportable quantity for Form A would be inconsistent with the intent of expanded reporting for PBT chemicals. They assert that EPA's argument is that since Form A does not require reporting of catastrophic release it has the potential to mislead the public as to the amount of release that might actually occur. However, they contend that the Agency fails to take into consideration the requirements of reporting of catastrophic releases of chemicals under other statutory requirements. Should such a speculative event occur, reporting is required and made available to the public through the Freedom of Information Act (FOIA).

Response: Although the commenter did not provide any examples, the commenter asserts that EPA should use accidental release data reported under other programs and made available through the FOIA process as a substitute for TRI data. However, as with comments that EPA received on the January 5, 1999, PBT chemical proposed rule (64 FR 688), EPA disagrees that there are other sources of data collected by EPA that provide an adequate substitute for TRI data on PBT chemicals, including lead and lead compounds. EPA provided detailed responses to these same general comments in the October 29, 1999, PBT chemical final rule and in the associated PBT chemical final rule RTC document (section 7.h.).

Commenter list includes: C-453 and C-467

Comment: Some commenters assert that EPA should not eliminate the Form A for facilities that have no releases of lead, such as elemental lead present in coal and fuel oil used for combustion. They argue that most, if not all, elemental lead in fuel is converted to a lead compound during combustion. Therefore, they contend, a facility will have no releases of elemental lead to report. They assert that because these facilities use well under one million

pounds of lead per year, they are entitled under the current rule to use the reduced reporting option of Form A. They believe that the EPA should not eliminate the Form A option for these facilities. They argue that to do otherwise would require the facilities to prepare a Form R report that ultimately will contain no more information than that provided in the Form A. They believe that the burdens on the regulated entities would far outweigh any benefit obtained from such reports.

Response: As in comments that EPA received on the January 5, 1999, PBT chemical proposed rule (64 FR 688), the commenter implies that when a facility estimates its releases to be zero, the facility should be eligible to use the Form A. The commenters also assert that the elimination of the alternate threshold for PBT chemicals such as lead and lead compounds will cause reporting burdens to increase while failing to provide for the collection of substantial additional release information.

For a facility that has zero releases and other waste management of a PBT chemical, using a Form A could be very misleading. For example, in the TRI database, no information regarding release and other waste management quantities is included for reports for which a Form A has been submitted. Because facilities may have up to 500 pounds of production related waste and still be eligible to submit the alternate threshold certification, users of the data may assume that 500 pounds of lead was released or otherwise managed as waste from this facility. This grossly overestimates the facility's zero releases for this chemical. The Form R, however, would indicate that the facility had zero releases. In addition, such Form R reports do provide the public with more information on PBT chemicals, such as lead and lead compounds, than the Form A does. In addition to providing specific release and other waste management information, the Form R indicates how the chemical is used and the maximum amount of the chemical on-site during the reporting year. Therefore, EPA disagrees that a zero-release Form R ultimately will contain no more information than that provided in the Form A or that the burdens on the regulated entities would far outweigh any benefit obtained from such reports. See EPA's detailed responses to similar general comments in the October 29, 1999, PBT chemical final rule and in the associated PBT chemical final rule RTC document (section 5.b.).

C. Below are excerpts from the Response-to-Comment Document of the Final TRI Lead Rule that pertain to alloys. These excerpts contain the specific comments that are identical or similar to those expressed by the Non-Ferrous Founders' Society, and EPA's responses to those comments. The numbers preceding sentences or sections pertain to the specific sections where these comments and responses appear in the Response-to-Comments Document of the TRI Final Rule for Lead and Lead Compounds.

7.a. Reporting limitation for lead contained in stainless steel, brass, and bronze alloys.

Commenter list includes: C-067, C-098, C-106, C-108, C-116, C-117, C-120, C-171, C-372, C- 421, C-464, C-466, C-668, C-695, C-711, C-736, C-737, C-739, C-758, C-759, C-766, C-768, C-779, C-789, C-806 D-002, and D-003

Comment: The commenters on this issue generally agree with EPA's proposed limitation on the reporting of lead contained in stainless steel, brass, and bronze alloys, but felt that it should be expanded. Some commenters suggest that all alloys should be included, while others cited various types of alloys that they believed should also be included, e.g., aluminum, copper, zinc, tin, iron, all steels, carbon and low alloy steels, leaded steel, and galvanized and drawn steel wire. Some commenters also suggest that other metals be included in a broader alloy reporting exemption and that the exemption should be for all reporting, not just for the lower reporting thresholds. Some commenters claim that EPA's reasoning in drafting the alloys exemption is that lead incorporated into an alloy does not pose the same hazard as unincorporated lead, is not bioavailable, does not exert toxic effects, is not available for exposure, and that this reasoning holds true for lead contained in other alloys. Commenters also contend that alloys have significantly different bioavailability, bioaccumulation, and toxicity characteristics than other forms of metals, and thus should be treated separately. Some comments state that an alloys exemption would enhance the ability of TRI to provide meaningful information to the public regarding the risk associated with the release and handling of toxic materials. Several commenters requested an exemption for the use of lead and lead compounds in wire soldering operations. Some commenters state that lead contained in primary aluminum and aluminum alloys is incidental and that the concentrations are significantly lower than that found in stainless steel, bronze and brass alloys, which intentionally contain lead, and therefore lead in aluminum alloys should not be regulated any more stringently than those alloys. One commenter states that EPA failed to demonstrate that lead is bioavailable in any metal alloy and illegitimately provided a preferential exemption only to certain metal alloys. The commenter contends that EPA has failed to show any rational basis for excluding other metal alloys from such an exemption and that limiting the exemption to stainless steel, brass, and bronze alloys is arbitrary and capricious and should be expanded to all, metal alloys, including aluminum alloys.

Response: EPA does not believe that it currently has any information that would support a decision to extend to other types of alloys, its deferral of a decision on a lower threshold for lead when contained in stainless steel, brass, and bronze alloys. EPA's proposed deferral was based on the fact that it is currently evaluating a previously submitted petition, as well as comments received in response to previous petition denials, that requested the Agency to revise the EPCRA section 313 reporting requirements for certain metals contained in stainless steel, brass, and bronze alloys. Contrary to the commenter's allegations, EPA has not determined that lead is neither toxic nor bioavailable when contained in these or any other alloys. Nor did EPA imply that lead or other metals contained in these or any other alloys are less hazardous than metals not contained in alloys, or that lead or other metals cannot exert toxic effects, or that lead or other metals are not available for exposure when contained in an alloy. Rather, the deferral is simply based on the fact that for stainless steel, brass, and bronze alloys, EPA is currently reviewing whether there should be any reporting changes. In light of that review, EPA

has decided to maintain the status quo for lead when contained in these alloys until the review is complete.

Lead is an EPCRA section 313 listed toxic chemical, and lead contained in all alloys are therefore subject to the EPCRA section 313 reporting requirements. As discussed above, EPA did not illegitimately provide a preferential exemption only to stainless steel, brass, and bronze alloys. EPA is merely maintaining the status quo with respect to the alloys that are the subject of the pending review. Other alloys are not part of that review. Because the commenters have submitted no information or data that would allow the Agency to conclude that lead in all other alloys are similarly situated, in light of its scientific findings in this rule with respect to lead and lead compounds, EPA has no basis for extending its deferral.

With respect to the request for an exemption for lead soldering, EPA does not believe that the commenter's allegation that lead may not be released during these processes, such as wire soldering, provides an adequate basis for excluding that activity from threshold determinations and release reporting requirements. Under EPCRA section 313, whether an activity must be counted towards an EPCRA section 313 reporting threshold is based on whether the activities fall within the definition of manufacturing, processing, or otherwise use, not on whether the activity actually, or potentially, results in releases. Additionally, because even low amounts of releases are of concern for PBT chemicals like lead and lead compounds, it is not appropriate to exclude a reportable activity merely because releases from that activity may be relatively low.

In addition, this rulemaking is specific to lead and is not the appropriate forum to address the issue of limitations or exemptions for other metals contained in these or other alloys; nor was comment on such issues requested in the proposed rule. EPA will be issuing a report on its review of the data for stainless steel, brass, and bronze alloys and will be asking for comments on the report.

The comment that an alloys exemption would enhance the ability of TRI to provide meaningful information to the public regarding the risk associated with the release and handling of toxic materials is not relevant to the issue of whether or not there should be reporting changes for any alloys. As EPA has previously discussed (64 FR 58592), EPCRA section 313 is a hazard-based program, not a risk-based program. As such, EPCRA section 313 does not directly provide any risk information to its users, but rather provides basic release and other waste management information on chemicals that meet the criteria in EPCRA section 313(d)(2). Congress established these criteria as the sole standard for listing decisions. Therefore, any final determination on whether there should be changes to the reporting of alloys will be based on whether the alloys meet the criteria of EPCRA section 313(d)(2).

Commenter list includes: C-739

Comment: The commenter stated that EPA's limitation on the reporting of lead contained in

alloys should apply to all alloys to be consistent with that proposed for cobalt and vanadium in the January 1999 proposal for other PBT chemicals.

Response: EPA disagrees that it must extend its deferral to all lead alloys to be consistent with its past actions on cobalt and vanadium. With respect to cobalt, in the October 29, 1999 final PBT rule (64 FR 58666), EPA only changed the reporting requirements for vanadium not cobalt. Regarding vanadium, the original vanadium listing contained the qualifier "fume or dust;" thus the status quo was that unless the vanadium alloy was converted to a fume or dust form, the vanadium in any alloys was not reportable. In the October 29, 1999 final rule, EPA added all forms of vanadium, except vanadium contained in alloys, to the list of TRI chemicals. EPA deferred its decision to add vanadium contained in alloys until it had resolved the pending petition. EPA explained its decision as follows: "At this time, while EPA is in the process of a scientific review of the issues pertinent to alloys, the Agency is not prepared to make a final determination on whether vanadium in vanadium alloys meet the EPCRA section 313(d)(2) toxicity criteria" (64 FR 58711).

At the time EPA made its determination with respect to vanadium, EPA chose not to add vanadium contained in any alloys to the EPCRA section 313 list of toxic chemicals. This decision excluded from a listing decision more than just the three classes of alloys specifically addressed in the alloys project out of concern that the project could be expanded to similar alloys. However, at the time of the lead proposal, EPA identified a potential concern with proposing a similarly broad deferral for lead since lead is used in many types of alloys that are not similar to stainless steel, brass, and bronze alloys. Because these other alloys, such as lead solder, are not being reviewed, and are currently subject to reporting under EPCRA section 313, EPA believes that the Agency has no basis to defer lowering thresholds for these other alloys. In light of the Agency's conclusions with respect to lead, EPA will review its October 29, 1999, vanadium decision and determine whether vanadium contained in alloys, other than the three classes of alloys currently under review by the Agency, should be added to the EPCRA section 313 list of toxic chemicals.

None of the commenters who supported a limitation for lead in other alloys submitted any data on which the Agency could rely to create such a limitation, or to extend the alloys review to encompass lead when contained in alloys other than stainless steel, brass, or bronze. As explained above, EPA believes that it has no basis to defer lowering thresholds for other alloys that are not currently being reviewed. If the commenter has data to support a revision to the reporting requirements for lead when contained in alloys other than stainless steel, brass, and bronze the commenter can submit it as part of a petition to delist lead contained in such alloys from the EPCRA section 313 list of toxic chemicals.

Commenter list includes: C-736 and C-793

Comment: The commenter (C-736) contends that EPA has exempted steel, brass and bronze alloys from reporting for lead with the implication being that these alloys do not yield sufficient

lead to be a significant risk. The commenter stated that there are many products containing trace amounts of lead which are at least as stable as bronze or steel alloys. The commenter contends that EPA provides no explanation for why these other products were not also provided an exemption and that EPA sets forth an artificial and unfair distinction. The commenter cites colored plastics, vinyl siding, ceramics, paints and inks as examples of products that do not leach lead in sufficient quantity to pose a risk to the community. The commenter contends that there is an assumption implicit in the proposed rule, that steel alloys containing lead are sufficiently safe and non-toxic to avoid reporting under the TRI, while all other forms of lead, lead compounds and thousands of products which may contain trace quantities of lead and lead compounds are not and that this is unsubstantiated in the record for this rulemaking. Commenter C-793 suggested that agricultural commodities, and feed and feed products also be provided an exemption similar to that for alloys.

Response: EPA is not providing an "exemption" to lead contained in stainless steel, brass and bronze alloys. As EPA discussed in other responses in these section, EPA is merely deferring a final decision on lowering thresholds for lead contained in these alloys until the scientific review of the alloys petition is complete. EPA has made no determination, implicit or otherwise, that lead contained in any alloy is safe, non-toxic, or without significant risk. Lead contained in other non-alloy products is currently reportable and since these other non-alloys are not part of the review of stainless steel, brass, and bronze alloys EPA did not include any similar deferral for these other products. With regard to these other lead containing products, if the commenters have data that indicate that the lead contained in these products cannot become available through any abiotic or biotic processes, then they may wish to provide these data in a petition to have the lead in such products delisted from the EPCRA section 313 listed toxic chemicals. In addition, under certain conditions, some of the products mentioned by one of the commenters (such as vinyl siding, colored plastics, and ceramics) may be eligible for the article exemption (see 40 CFR § 372.38 (b)) and thus would not be subject to reporting in any case.

Comment Number	Commenter Identification
C-067	Alcan Aluminum Corporation
C-070	Duquesne Light
C-083	Greater Winston/Salem Chamber of Commerce
C-095	AIAM
C-098	Otter Tail Power Company
C-103	American Portland Cement Alliance
C-104	International Paper
C-105	RJ Reynolds Tobacco Company
C-106	Deere & Company
C-108	Reynolds Metals Company
C-115	Abbott Laboratories
C-116	Kohler Company
C-117	Aerospace Industries Association of America
C-120	Collier Shannon Rill & Scott
C-171	Steel Manufacturers Association
C-234	National Environmental Trust
C-253	Dayton Power And Light Company
C-346	Arizona Public Service Company
C-372	General Electric Company
C-375	Purina Mills Inc
C-385	American Feed Industry Association
C-421	Reynolds Metals Company
C-423	Talley Defense Systems Inc
C-453	Utilicorp United
C-464	LTV Copperweld
C-466	The Aluminum Association
C-467	Virginia Power
C-470	American Petroleum Institute
C-550	Illinois Power
C-556	Clariant Corporation
C-557	Private Citizen
C-668	Private Citizen
C-685	The Fertilizer Institute
C-690	Phelps Dodge Corporation
C-691	Eastman Chemical Company
C-695	American Zinc Association
C-704	American Foundrymen's Society Inc
C-709	Mercatus Center
C-711	The American Iron And Steel Institute (AISI)
C-712	American Public Power Association
C-714	Fabricolor Inc
C-724	Ohio Cast Metals Association (OCMA)
C-730	The City of Hamiltou Department of Public Utilities

C-732	New Century Energies
C-733	South Carolina Chamber of Commerce
C-736	Color Pigments Manufacturers Association Inc
C-737	General Motors Corporation
C-738	Chemical Manufacturers Association
C-739	Delphi Automotive Systems
C-745	The Black & Decker Corporation
C-757	Institute of Makers of Explosives (IME)
C-758	Briggs & Stratton Corporation
C-759	Lockheed Martin Corporation
C-760	American Forest & Paper Association
C-761	National Lime Association (NLA)
C-766	Council of Industrial Boiler Owners
C-768	Department of Energy
C-779	American Copper Policy Council
C-780	Edison Electric Institute
C-781	Synthetic Organic Chemical Manufacturers Association
C-786	Davis Wire Corporation
C-787	The Non-ferrous Founders' Society
C-789	Asarco Incorporated
C-791	Reliant Energy Inc
C-792	Northern States Power Company
C-793	Corn Refiners Association et al
C-800	National Ready Mixed Concrete Association (NRMCA)
C-801	The Ferroalloys Association
C-803	Electronic Industries Alliance
C-806	The National Association of Manufacturers
C-807	Entergy
C-812	IPC
C-815	Screenprinting & Graphic Imaging Association et al
D-002	USEPA- Transcript Los Angeles Public Meeting on Proposed Rule
D-003	USEPA- Transcript Chicago Public Meeting on Proposed Rule
D-005	USEPA- Transcript Washington DC Public Meeting on Proposed Rule